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GENERAL HEADINGS.

Cases Reported this Week.

Current Topics.

Reprisals.

THE QUESTION of reprisals for Zeppelin raids on non-combatants is still, we observe, matter of discussion, and we are surprised that Professor MORGAN has lent this method of warfare the weight of his authority. But, as we have pointed out, for a civilized nation there can be no reprisals which do not respect the laws of humanity and morality. The great statesman whom we quoted last week—BURKE—notices with regret that "war suspends the rule of moral obligation." It is quite possible that observant eyes see traces of this tendency at work at the present time, and also an absence of restraint which bodes no good for the future. But it is hardly likely that this will be allowed to take the form of the intentional slaughter of German women and children. We are content to leave to the captain of a Zeppelin, starting on its murderous voyage, the words of HECATE, Queen—at least according to the later mythology—of Hell:—

> "I am for the air; this night I'll spend
> Unto a dismal and a fatal end."

Sir Robert Finlay.

WE HOPE to notice more at length next week the January number of the *Journal of the Society of Comparative Legislation*—interesting both because it marks the coming-of-age of a publication which is of great use in bringing together, and thus assisting in the co-ordination of, the laws of various parts of the Empire, and also for its lucid summary of the Emergency Legislation, both in the United Kingdom and in the Dominions Over-sea. But we are glad to take the opportunity at once of calling attention to the portrait of Sir ROBERT FINLAY—a very excellent one—and the sketch of his career which has been contributed by Mr. Justice ROWLATT. It may not be generally known that Sir ROBERT, after leaving Edinburgh Academy, took his M.D. at Edinburgh University, with a view to practice, but he changed his mind, entered at the Middle Temple, became a pupil of the late Sir JOHN DAY, and was called in 1867. His association with DAY brought him practice, and in 1882 he took silk. Mr. Justice ROWLATT

dates his acquisition of a foremost position at the Bar from the time when he followed Lord HARTINGTON in the Home Rule split, his speech against the Bill being described as "one of the best and most closely reasoned on his side of the controversy." The way was cleared for him by the promotion of DAVEY and RIGBY, and he was "at the very top" of the profession when he became Solicitor-General in the Unionist Government of 1895; in 1900 he succeeded WEBSTER as Attorney-General, and continued in office till 1905. He represented this country in the Alaska Boundary Arbitration in London in 1903, and, in the same year, in the Venezuelan Claims Arbitration at The Hague. And he had similar work when in 1910 he appeared at The Hague for Canada and Newfoundland in the North Atlantic Coast Fisheries Arbitration. On his retirement from office he at once regained his position as the leading advocate in the House of Lords and Privy Council, and to other departments of law of an international character he is now adding Prize Law. "No one," says Mr. Justice ROWLATT, "will understand Sir ROBERT FINLAY who does not appreciate the fulness of his mind, apart altogether from his legal attainments. It is probably not generally known that he is a ripe and accurate classical scholar, proficient in French and German, able to read *Don Quixote* and the *Inferno* in the originals, and not unacquainted with modern Greek. From this it has resulted that his law has always been scholarly—accurate without technicality, informed but without pedantry." It is probable now that his career, like that of some other great advocates and accomplished lawyers, will be confined to the Bar, but there his courtesy and kindness have endeared him to his colleagues. To conclude with Mr. Justice ROWLATT'S words:—"He enjoys in a degree never surpassed the affectionate respect of a profession which is proud of him."

The New War Orders.

THE War Orders and Proclamations which we print this week contain several important items. There is a Proclamation forbidding the importation, save under Board of Trade licence, of various goods of a bulky character. These include paper and all materials for the manufacture of paper, and also—in a very different category—tobacco, unmanufactured and manufactured (including cigars and cigarettes). The Proclamation purports to be issued under section 43 of the Customs Consolidation Act, 1876, which provides that the importation of "arms, ammunition, gunpowder, or any other goods" may be prohibited by Proclamation or Order in Council. We are not particularly concerned about tobacco, but we take a business—or, may we say, a professional—interest in paper, and we would like to think that "any other goods" ought to be construed on the *ejusdem generis* rule, and confined to munitions of war. In fact, however, the intention is to do no more than reduce the supply by one-third, and to secure that consumers of paper shall receive two-thirds of their supplies in the standard year. It should be possible also for the Government to give favourable consideration to papers which serve a useful end, and do not subsist to spread war excitement from day to day. The War Orders also include an extension of the Liquor Control areas. There is now to be a "Southern Military and Transport Area," absorbing the Portsmouth and Southampton areas, and covering generally the South of England, and the Bristol area is extended to include Bath. Considering the good which appears to have been done by the Liquor Restrictions, and the number and extent of existing areas, it is somewhat singular that they are not made universal, as they might very well have been at first. Of a different nature is the new Shipping Order, which virtually places the whole of the shipping of the United Kingdom under Board of Trade Regulations.

The Commandeering of Supplies.

THE NEW Defence of the Realm Regulations seem to have been prompted by the desire of the Government draftsman to outdo his performance in the regulation which, according to the Court of Appeal, has annihilated all the constitutional safeguards for the liberty of the subject. His success was clearly followed by the mental comment—"To-morrow to fresh woods and pastures new," and accordingly he has now drafted, and the Government have issued, a regulation as follows:—

> "It shall be lawful for the Admiralty or Army Council or the Minister of Munitions to take possession of any war material, food, forage, and stores of any description, and of any articles required for or in connection with the production thereof."

And by a further regulation the same authorities may commandeer the output of

> any factory or workshop in which arms, ammunition, food, forage, clothing, equipment, or stores of any description or any articles required for the production thereof are or may be manufactured.

If the general words here are to be construed on the *ejusdem generis* rule, referred to above, then the regulations are limited to warlike material, and there is less objection to them, though they would still go beyond the apparent scope of the Defence of the Realm Consolidation Act. But more probably they are to be taken to include food, clothing, or stores of any description, and doubtless an attempt will be made to justify the new regulations, as in *Zadig's case*, on the ground that they are regulations "for securing the public safety and defence of the realm." If these words are to be taken in the widest sense, then there was, as a contemporary last week pointed out, no reason for the Military Service Act. Conscription could just as well have been introduced by regulation.

Legislation as to Commandeering.

BUT AS REGARDS the taking of stores, Parliament has placed a definite limit on what may be done. Under section 1 (3) (a) of the Defence of the Realm Consolidation Act, 1914, the Admiralty or Army Council—and now also the Minister of Munitions (Ministry of Munitions Order in Council, 1915, par. 3)—can commandeer the output of "the whole or any part of the output of any factory or workshop in which arms, ammunition, or warlike stores or equipment, or any articles required for the production thereof, are manufactured." This specific power places an obvious limit on what can be done under the general words of sub-section 1. Moreover, Parliament has dealt specially with the commandeering of general supplies. There was first the Unreasonable Withholding of Food Supplies Act, passed on 10th August, 1914, and a fortnight later this was repealed, and was replaced by the Articles of Commerce (Returns, &c.) Act, 1914. This applies to articles of commerce generally; it empowers the Board of Trade to commandeer them if they are unreasonably withheld from the market; and it provides machinery for the settlement of the price by a judge of the High Court. The last provision has been inserted in the new regulations; but, of course, all these particular powers under the Emergency Statutes shew that the general powers now claimed by the new regulations are outside the scope of the Defence of the Realm Acts. There is a new regulation under which "munitions offences" may be referred for trial by court-martial, subject, in the case of a British subject, to his rights to civil trial under the Defence of the Realm (Amendment) Act, 1915. We do not view with favour these extensions, either of the liberty of the military authorities to exercise arbitrary power, or of trial by court-martial, and some day, we hope, Parliament will wake up to what is being done.

The Increase of Rent, &c., Rules.

A CORRESPONDENT asks for an explanation of the reference in the Increase of Rent, &c., Act Rules, rr. 8, 11, and 13 (*ante*, p. 277), to various clauses of the County Court (Army Act) Rules, ord. 50, r. 14. This is the Order which prescribes the procedure for fixing by the county court of the price of carriages, animals, and vessels requisitioned under section 115 (4) of the Army Act. A new rule 14 was introduced in May, 1915, and is printed in 59 SOLICITORS' JOURNAL, p. 512; Annual County Courts Practice, 1916, p. 966. Certain of the present Increase of Rent, &c., Rules correspond with this

Army Act rule, and the reference is, we presume, given to shew the similarity of procedure. Our correspondent also asks whether the Act applies to a mortgage *for ground rents* secured on houses to which the Act applies. We incline to think it does not. The mortgagor, for instance, is to be a person whose business it is to repair the property (section 1 (4)), and this a ground landlord does not do, though he can require the lessee to do it. But we should prefer to postpone the matter till next week, and meanwhile perhaps some of our readers will assist us with their opinion.

The Increase of Rent, &c, Act and "Improvements."

A CORRESPONDENT, in a letter which we print elsewhere, raises an interesting question as to the meaning of the expression "expenditure on the improvement or structural alteration of a dwelling-house" in section 1 (i), prov. (ii) of the Increase of Rent, &c., Act, 1915. Such expenditure authorizes an increase of rent not exceeding 6 per cent. on the capital outlay. The point is whether such an improvement must be to the fabric of the house, or whether outlay for paving, &c., is also included. It is not sufficient, we think, to remark that improvements to the house itself are covered by "structural." The conversion of premises from one purpose to another—such as from a dwelling-house to a shop—may be an "improvement," quite apart from structural alterations (see *Doherty* v. *Allman*, 3 App. Cas., p. 719), and, on a narrow reading of the Act, it may be held that the building must be physically altered. But ordinarily the term "improvement" has a wider meaning, and includes works which increase the value or amenities of property—such, in the case of a mansion house, as a private road (Settled Land Act, 1882, s. 25, *Re Windham's Settled Estate*, 1912, 2 Ch. 75); and what a private road is to a mansion house in the country, that is the paving at the common cost of a road serving a row of houses in a town. Our correspondent refers to statutes which include the term "Improvement" in their title as supporting this view; but it should be noticed that the word looks to the improvement of a town or place generally, and not of particular houses (see 14 & 15 Vict. c. 28, s. 2; 18 & 19 Vict. c. 121). Still, "improvement of a house" would seem, on ordinary principles of interpretation, to include the amelioration due to paving changes, and we imagine these are within the Act; but we do not regard the point as clear.

Extra-Territoriality of Diplomatic Envoys.

THE CORONER of Westminster has just admitted, on the part of the Italian Ambassador, what we fancy is a quite unique claim of "diplomatic immunity," and we presume that he has done so on the advice of the Home Secretary and the Law officers of the Crown. Cavaliere ROBERTO CENTARO, the first secretary of the Italian Embassy, was found shot in his bedroom at Claridge's Hotel, and the coroner was duly informed. In such a case it is the *prima facie* duty of the coroner to hold an inquest into the cause of death (Coroners Act, 1887, s. 3 (1)). But such an inquest is in the nature of a trial of the deceased for homicide; for if a man is found dead by other than natural means, the law presumes the homicide to be *felo de se* unless and until it is placed in a different category—such as murder by some third party, or death by misadventure (excusable homicide)—by the evidence adduced at the inquest (Kenny, pp. 112 *et seq.*). The crime is either murder or manslaughter, according as the deceased shewed murderous malice or not in taking his own life (Stephen's Digest, article 249). At common law the person found by a coroner's jury to be *felo de se* was punished in the person of his corpse by burial in a highway with a stake through his body, and his chattels—like those of other felons—were forfeited to the Crown. But in 1870 the Forfeiture Act removed the latter penalty, and in 1882 the statute 45 & 46 Vict. c. 19, abolished every penalty for suicide except the ecclesiastical one of a refusal of burial service in accordance with the Anglican rite. This shews clearly that the jurisdiction of a coroner in such a case is criminal, and hence the well-settled rule of International Law—which exempts a diplomatic envoy and his suite from civil or criminal process (7 Anne, c. 12)—excludes the jurisdiction over the dead body of any member of an Ambassador's suite. Apart from this rule, indeed, the coroner's right to hold an inquest is equally excluded by a second rule of International Law, which forbids the arrest of a diplomatic envoy's person, the seizure of his chattels, or entrance into his domicile, except when he is abusing the sanctity of his house to conspire against the Sovereign (Oppenheim, vol. 1, pp. 461 *et seq.*). The right of a coroner to hold an inquest is not absolute, and clearly is excluded when proof is offered that the corpse is that of a person over whom the Sovereign whom the coroner serves has no jurisdiction.

Trial with Assessors.

EXCEPT IN the Admiralty Division and on Admiralty appeals in the Court of Appeal, it is only very rarely that a Judge tries a case with the aid of assessors in the manner permitted by section 56 of the Judicature Act, 1873, and ord. 36, r. 7. Indeed, expert witnesses are usually regarded as having displaced altogether the provisions of this statutory procedure. But a daring, though unsuccessful, attempt to justify, by the authority of the section, a step taken by DEANE, J., has just been made in the Court of Appeal in the *Slingsby case* (*Times*, 7th inst.). While hearing in the first instance court an action for a declaration of legitimacy, the learned Judge was struck by certain apparent resemblances between the mother and the child alleged to be hers, and, *nemine contradicente*, he called in a celebrated sculptor to assist him with his opinion. Now the sculptor did not go into the witness-box, and so his intervention could not be justified on the ground that he was an expert witness upon identity and corporeal resemblances between persons nearly related in blood. Nor was he appointed to sit with the Court as an assessor on some matter requiring expert assistance, for no order to that effect was made either on the summons for directions or at any time. And even if, under ord. 36, r. 7, a formal order for the Court to sit with an assessor could be dispensed with, or if its absence could be waived by assent of parties, there remained the plain fact that the sculptor, Sir GEORGE FRAMPTON, did not sit with the Judge during the whole course of the case; he merely attended one day at the private request of the Judge. It is hopeless to say that this is what is contemplated by the statutory procedure permitting "trial with assessors" as an alternative to trial with a jury or by the Judge alone.

Depository for the Wills of Living Persons.

LORD CRANWORTH, in introducing the Probate Act, 1857, is reported to have said—"The Bill would contain a provision which, though not precisely germane to the question of proving wills, would, he believed, be found of great advantage. It frequently happened that upon a person's death his surviving relatives did not know where to look for his will. It might not be discovered among his papers, and much difficulty often resulted from this uncertainty." Section 91 of the Act directed, accordingly, that one or more safe and convenient depository or depositories should be provided under the control and directions of the Court of Probate for all such wills of living persons as should be deposited therein for safe custody, and all persons might deposit their wills in such depository upon payment of such fees and under such regulations as the Judge should from time to time by any order direct. A depository for the safe custody of the wills of living persons at Somerset House has, indeed, been provided by the State, but the enactment has been almost a dead letter. It is doubtful, we are informed, whether as many as twenty wills have been deposited at Somerset House in any one year since the depository was established. What reasons can be conjectured for this disregard of the Act? The testator has only to pay a small fee of 12s. 6d. for the deposit and registration of his will, which will not be given up to anybody, but must remain in the registry until the testator dies, unless he goes to the registrar with the original

minute of deposit and other proof of his identity. But if an unmethodical person who has made a will will not take the trouble to put it into a suitable box or drawer, will he be more likely to take a journey to Somerset House and there go through certain formalities, including the payment of a small sum of money to which many persons have an unaccountable objection? And it must be remembered that in many cases the reason why no will can be found is the fact that no will was ever made. It has been suggested that the Public Trustee Act, 1906, enabling the Public Trustee to act as executor of a will, may to some extent have interfered with the necessity of a depository for the safe custody of wills; but we doubt whether this suggestion is well founded.

The Prosperity of Barristers One Hundred Years Since.

THE INCOMES of barristers are often over-estimated, but a passage in the Reminiscences of HENRY CRABB ROBINSON is some proof that they have much increased since the year 1815. HENRY CRABB ROBINSON, a successful practitioner on the Norfolk Circuit, in his review of the year 1815, says that, so far as he was concerned, it had been a year of uninterrupted prosperity, a year in which he had been so successful in his profession that he had a prospect of affluence if the success continued. These remarks are stated to have been occasioned by the rise in ROBINSON'S fees from £219 in 1814 to £321 15s. in the following year, and are confirmed by a reference to briefs delivered at the assizes in the early part of the last century, which are marked with fees of singular moderation.

The Arming of Merchantmen.

THE QUESTION of the arming of merchant vessels for purposes of defence is likely to assume considerable prominence in the three-cornered contest going on between the United States and the Belligerents on either side. We may refer again to the pamphlet on this subject which Dr. PEARCE HIGGINS published at the beginning of the war (Stevens and Sons, Ltd., 1s. 6d.), in which he showed that a merchant ship was entitled to resist if attacked, and for this purpose she must carry suitable armament. Whether it is prudent for her to resist is another matter, but that she has the right seems clear, and this is recognized by the United States. But it is still uncertain how the disputes with Germany about the loss of life in the *Lusitania*—for which she was to be held to "strict accountability"—and her threatened new form of submarine warfare, and, in another category, the dispute with Great Britain as to interruption of traffic, will end.

The Constitutional Safeguards of Liberty.

WE commence to print elsewhere an interesting and illuminating address on *Magna Carta*, delivered before the State Convention of New York by a distinguished American jurist, Dr. GUTHRIE, Professor of Constitutional Law in Columbia University. A melancholy interest, indeed, attaches to *Magna Carta* to-day amongst English lawyers. In the midst of a great war our legislators and our judges have cast aside the spirit as well as the letter of that document. Imprisonment by *Lettre de Cachet* and Compulsion for military service overseas, whether or not they be necessary, are sad inroads on the constitutional liberties of Englishmen. These constitutional liberties, Dr. GUTHRIE reminds us, grew up and clustered round *Magna Carta*. Confirmed thirty-seven times by English kings, only to be broken again and again by Tudor monarchs, *Magna Carta* commanded reverence through five long centuries among all English lawyers; its traditions were universally learned and esteemed; men like COKE and SELDEN and HAMPDEN succeeded in securing legal recognition of the right to civil and political liberty, because the generation to whom they expounded the British Constitution had been brought up to regard that great document as sacred. During the seventeenth and eighteenth centuries, indeed, it was regarded as a fundamental charter of the Constitution, putting limits to the powers alike of King and of Parliament. Any statute, either of King or Parliament, which infringed the rights it conceded to the subject was regarded as *ultra vires* and unconstitutional.

In the reign of George III. a great reaction took place. Statesmen and judges, fighting against liberty in America and against revolution in France, came to hate the idea of "Natural Rights." *Magna Carta* lost all sanctity in the generation which sent COBBETT to prison for opposing flogging in the Army, MURE to life-long transportation for advocating a constitutional reform of the constituencies, and PAINE'S publishers to prison for printing the "Rights of Man." When Lord BRAXFIELD could tell a Scotch jury, as he did in the MURE trial, that the British Constitution was so manifestly perfect as to render it impossible that an educated lawyer could be honest in desiring its improvement, it is clear that *Magna Carta* had suffered an eclipse. A series of statutes, the oppressive Five Acts, were passed by Parliament, and held to be within its powers by the judges, though they were utterly inconsistent with the first principles of liberty—a characteristic which many liberty-loving lawyers believe they share with some, at least, of the Regulations made under the Defence of the Realm Act.

This tendency to regard *Magna Carta* as no longer binding on Parliament, or restricting its powers, was reinforced from a very unexpected quarter at the beginning of the nineteenth century. JOHN AUSTIN lectured on Jurisprudence, and taught his somewhat academic doctrine of all laws being the command of a visible sovereign, a person or an assembly, or a body of Estates. He taught academic lawyers in England to regard as absurd and unscientific the notion that there could be any limitation on the power of the sovereign or sovereign body. He fixed in the minds of students the governing idea that there cannot be any fundamental unchangeable constitutional laws. His theory was successful in convincing the judges and lawyers of the first half of the century that Parliament was supreme, and in our own day the luminous, if somewhat superficial claim, of Professor DICEY has made this conception of our Constitution so popular among lawyers that a practitioner, who happens to be unlearned in legal history, imagines that it always was held by our judges and jurists. COKE, indeed, is nowadays thought by most lawyers to have been a staunch upholder of Parliamentary sovereignty, a doctrine which, we may safely say, he regarded with at least as much abhorrence as the Baconian dogma of the Immanent Powers of the Royal Prerogative. Indeed, as DICEY himself points out, COKE took the view that the judges were the guardians of the fundamental laws of the Constitution, and ought to declare *ultra vires* any statute which infringed them.

But the view of AUSTIN and DICEY, unsound historically and dangerous to liberty as it is, has prevailed. The liberties of a minority are in consequence at the mercy of any sufficiently numerous majority. It would have been possible to impose one limitation upon this new doctrine of Parliamentary absolutism, and we believe that this is what the great common law judges of the nineteenth century would have done. They would have held that *Magna Carta* was a document of so high and binding a character, that, although Parliament could overrule it, it must be presumed not to do so unless it did this in express terms. In other words, the Legislature is authorized to infringe personal liberty, if it will, but the courts will presume strongly against an intent to infringe that liberty in any particular case. But the twentieth century has seen the passing of even this limited divinity which in its predecessor still hedged round the Great Charter of English Liberty. Accustomed to years of bureaucratic legislation and an ever-increasing infringement of liberty by Parliament, our judges—in the Divisional Court and the Court of Appeal, at any rate—have now declared that *Magna Carta* is but an Act of Parliament as are other Acts, and no later statute, at least in war-time, is to be construed—even when patently ambiguous—in the spirit of respect for *Magna Carta*. Such a view would have been impossible in an age reared on COKE and

SELDEN instead of AUSTIN and DICEY. The generation which supported "Wilkes and Liberty" against the autocracy of a House of Commons would not have comprehended its meaning. And if English liberties are to be restored in their full sense at the close of the present war, it is well that the generation of law students in the days to come should be encouraged to commence their study of Constitutional Law at the fountain-head with a perusal of *Magna Carta*.

The Damages Recoverable on a Breach by the Purchaser of a Contract to Sell Land.

I.

THE case of *Keck* v. *Faber* (*ante*, p. 253) affords an instructive example of the damages recoverable on a breach *by the purchaser* of a contract for the sale of land. In this instance there is no question of the vendor's not obtaining any compensation for loss of his bargain, according to the rule in *Flureau* v. *Thornhill* (2 W. Bl. 1078) and *Bain* v. *Fothergill* (L. R. 7 H. L. 158), which applies only where the breach of contract is *the vendor's*, and is caused by his inability, without his own fault, to shew a good title. But the case is governed by the general principle of the common law, that where a party sustains a loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the same position, with respect to damages, as if the contract had been performed: PARKE, B., in *Robinson* v. *Harman* (1 Ex. 850, 855), *Wall* v. *City of London Real Property Co.* (L. R. 9 Q. B. 249, 253); *Wigsell* v. *School for Indigent Blind* (8 Q. B. D. 357, 364); Lord ATKINSON in *Addis* v. *Gramophone Co.* (*Limited*) (1909, A. C. 488, 494, 495); *Chaplin* v. *Hicks* (1911, 2 K. B. 786, 794); *British Westinghouse, &c., Co.* (*Limited*) v. *Underground Electric Railways, &c.* (*Limited*) (1912, A. C. 673, 689). And the vendor's right to damages is exactly the same as the right of a vendor of goods to be compensated for the purchaser's failure to carry out the contract. That is to say, where the property sold is left in the vendor's possession, he is not entitled to recover the whole contract price as damages, but is limited to the difference, if any, between the contract price and the value, at the date of the breach, of the property sold: *Laird* v. *Pim* (7 M. & W. 474, 477, 478); *Barron* v. *Arnaud* (8 Q. B. 604, 609, 610); *Noble* v. *Edwardes* (5 Ch. D. 378, 388); *Jamal* v. *Moolla Dawood, Sons & Co.* (1916, A. C. 175). This rule was applied in *Keck* v. *Faber*, the Official Referee having based his report as to the damages recoverable upon the principle that the measure of damages was the difference between the price which the vendor would have received if the contract had been fulfilled and the value in money of the estate at the time of the breach of contract, and ASTBURY, J., having expressed the opinion that this principle was correct. The rule has been treated as established for sales of land ever since the decision in *Laird* v. *Pim* (1841, 7 M. & W. 474; see Sug. V. & P. 238, 14th ed., 2 Dart, V. & P. 957, 5th ed.); but *Keck* v. *Faber* seems to be the first reported case in which a sum of money (as it happened, over £19,000) has actually been recovered by a vendor of land as damages for the decreased value of the land at the date of the breach, as compared with that set upon it by the contract price. In *Laird* v. *Pim* the only items of damage actually recovered by the vendor were £680 for interest on the purchase money, and £70 for brick clay removed by the purchaser who had been in possession. The vendor there had claimed to recover the whole of the purchase money in addition, but the Court rejected this claim; and it seems that, in the vendor's anxiety to obtain the whole price, he had omitted to make any claim for the difference between the contract price and the value of the land as left on his hands, or else he had considered that there was in fact no difference between them.

In the case of a sale of goods which are in constant demand and are being daily sold in the market, or, in the case of stocks and shares, on the Stock Exchange, there is no difficulty in ascertaining their value at the date of a breach of contract to buy them. It is their market value, that is, their selling price in the market at the time of the breach. Land, however, has not usually any such ascertained selling price in the market; but its value is equally what it might reasonably have been expected to fetch if sold on the day of the breach. In the case of *Keck* v. *Faber* the purchaser had resold the most valuable part of the estate in lots for £82,107; and the vendor's counsel admitted that this sum must be taken to be the value at the date of the breach of that part of the property. This left the vendor, on the one hand, in possession of (1) land admittedly worth £82,107, and (2) the land not resold by the purchaser, and on the other hand entitled to be satisfied in money for the purchaser's breach of contract to pay the entire contract price of £251,700. It is obvious that, to ascertain what the purchaser should pay as damages, the value of the land resold (£82,107) must be deducted from the contract price (£251,700); and it must be found what the value of the rest of the land was, and that value must be compared with the balance of the contract price (£169,593), and, if less than such balance, deducted from it. This is what was done.

We may remark that the sub-sales completed by arrangement with the vendor were apparantly treated as sales made by the vendor after the breach in exercise of his right of ownership, which was restored to him by the breach and the judgment for damages therefor. On this hypothesis, all purchase moneys received by the vendor upon these sales would be his own moneys, for which he would not be accountable to the purchaser, even though he might have realized a profit over the original contract price. This is established by the recent case of *Jamal* v. *Moolla Dawood, Sons & Co.* (1916, A. C. 175), a case of the sale of shares, but equally applicable to the sale of land; see the decisions above cited.

As to that part of the property which the purchaser had not resold, the vendor's contention was that the contract price had been a fancy price, and that this land, as left on his hands, was worth much less than £169,593. The Official Referee reported that he put the gross value of it at an average of £30 per acre, and that "from that gross sum should be deducted 10 per cent. for what was conveniently called in evidence the difference between wholesale and retail price." It was explained in the judgment of ASTBURY, J., that the Official Referee meant that he found that the land would be worth £30 an acre if it were nursed by a speculative buyer and gradually sold, but that, if it were sold in block or in lots at or about the time of the breach, its value would be 10 per cent. less. The Judge said that the vendor was not bound so to nurse the estate, but was entitled to get the difference between the contract price and the selling price, not necessarily at the moment of the breach, but if he realized within a reasonable time of the breach. And the Judge accepted the latter finding—viz., of £30 an acre, less 10 per cent. (or £27 an acre), as a definite statement of fact as to the value of the unsold land at the date of the breach; and the damages for the vendor's loss of his bargain, in not obtaining the contract price, were adjusted on that basis accordingly, and £19,818 awarded to him therefor.

It is apprehended that what the learned Judge said about the vendor being entitled to get the difference between the contract price and the selling price, not necessarily at the moment of the breach, but if he realized within a reasonable time of the breach, was not intended to qualify the proposition of law, to which he had previously assented, that the measure of damages is the difference between the contract price and the value of the land *at the time* of the breach. And it seems that the Judge merely intended to say that he did not disapprove of the Official Referee's considering what the land would be likely to fetch, if sold at the date of or within a reasonable time after the breach, as a guide to his finding of fact that the value *at the date of the breach* was

£27 an acre. It is thought that there can be no doubt that in these cases the fact to be ascertained is, what was the value of the land as left on the vendor's hands at the date of the breach, that is, the particular day on which the breach took place. And it is submitted that if, within a few days thereafter, there were a sudden rise or fall in the value of the property, the vendor would nevertheless remain entitled to recover the difference (if any) between the contract price and the value of the land as on the day of the breach; and that the damages so to be ascertained could not be diminished by any subsequent rise or increased by any subsequent fall in the value of the land. For this the case of *Jamal* v. *Moolla Dawood, Sons & Co.* appears to furnish ample authority.

From the £19,818 awarded as damages as above mentioned, the amount of the deposit, £12,665, was deducted. This was perfectly correct. Where a deposit has been paid, the vendor, *affirming* the contract by suing for damages for the purchaser's breach, is not entitled to retain the deposit as forfeited, and to recover *in addition* his full measure of damages for the breach; but he is bound to account for any money received by or paid over to him in respect of the deposit as having been paid in part satisfaction of the price, and to allow that amount to be taken in reduction of the damages. And this is the case even though the contract expressly provides that the deposit shall be forfeited on the purchaser's breach; any such stipulation being construed to give to the vendor the right to claim the deposit *as forfeited* in the event only of his *recission* of the contract for the purchaser's breach: see *Ockenden* v. *Henley* (E. B. & E. 485); *Shuttleworth* v. *Clews* (1910, 1 Ch. 176).

The other items, in respect of which damages were recovered in *Keck* v. *Faber*, also deserve notice, especially the difference between the scale fee payable by the vendor to his solicitors if the sale had been completed and their charges under Schedule II. of the Solicitors' Remuneration Order in consequence of the breach; but these must be dealt with next week.

T. CYPRIAN WILLIAMS.

(To be continued.)

Magna Carta.*

To the student of American institutions it must appear singularly impressive and instructive that the members of the Constitutional Convention of the State of New York should pause in their important work to celebrate the seven-hundredth anniversary of the Great Charter of English Liberties and to look back reverently through the centuries to the sources of our constitutional law and to the days when our ancestors were laying the foundations of civil liberty and political justice. It is, indeed, no exaggeration to assert that Magna Carta marked the greatest political epoch in the history of our race, in that it saved England from becoming one of the arbitrary and degrading despotisms which arose in Europe after the overthrow of the feudal system, and that from its principles sprang representative and constitutional government, with all that these words have grown to mean to Americans. This ceremony must again emphasise the great truth that everything which has power to win the obedience and respect of men must have its roots deep in the past, and that the more slowly institutions have grown, so much the more enduring are they likely to prove.

Two hundred and eighteen years ago the Royal Governor of New York is reported to have exclaimed to the Legislature of the colony that "There are none of you but are big with the privileges of Magna Carta." And to-day, Mr. President, can it not be said with equal force and pride that there are no Americans but are big with the privileges of Magna Carta? Long may that continue to be true! And to provide that the spirit of those privileges shall endure for ever, so far as lies in human power, is the highest and noblest duty of every American constitutional convention.

Other speakers will treat of the historical and political aspects of Magna Carta and of its reissues and confirmations by King after King and Parliament after Parliament. I am to speak to you of the legal value of some of the cardinal features of the Great Charter as antecedents of principles which are closely connected with our present political being, and which continue to invigorate our system of constitutional law. Yet, my treatment of this large and important aspect of the subject must necessarily be inadequate, in view of the limited time at your disposal.

It is undoubtedly true that Magna Carta contained much that was old in 1215 and much that subsequently became antiquated because inapplicable to changed conditions; but it crystallized, and served to perpetuate, the fundamental principles of the liberties of Englishmen. Solemnly confirmed no less than thirty-seven times by seven Kings of England, it naturally became in the eyes of Englishmen the embodiment of their deepest and most firmly rooted right and liberties and their great and stirring battle-cry against tyranny. The reissue of 1225 still remains on the English statute books as in force and effect, so that, as an English historian has recently said, every act appearing on their statute rolls is in a sense an act amending Magna Carta.

The spirit of Magna Carta, as it thus survived, has for centuries inspired Englishmen and Americans, even though its letter may have died and most of its provisions may long ago have become obsolete and their exact meaning hidden under the ruins of the past. Indeed, provisions of the Great Charter were frequently violated by King and Parliament after 1215, and were allowed to fall into neglect for generations at a time; but it cannot be doubted that, if the principles they embodied had been observed, they would have secured permanent political liberty and constitutional government to England long before the seventeenth century, and that only through disregard of those principles were possible the five centuries of tyranny and oppression which English history records.

It may likewise be true, as some historians of the scientific school are now contending, that the framers of the Great Charter and the representatives of the English church, baronage and people gathered on the meadows at Runnymede on the 15th day of June, 1215, had little or no grasp of the science of politics and of constitutional principles as we understand them. It is probably true that they had no very definite conception of the theory of representative government, or of the separation of governmental powers, or of those inalienable rights of the individual which our Declaration of Independence was later to proclaim, just as it is probably true that very few of them could even read the language in which the Charter was written. It may be conceded that its framers builded better than they knew, and also that many of the traditions as to the intent, meaning and scope of its provisions—traditions which were so potent and inspiring during the seventeenth and eighteenth centuries—were founded, as is now asserted, upon legends and myths.

Yet, the very admission of the existence of these traditions makes it indisputable that, growing up and clustering around Magna Carta, they served to keep alive and perpetuate its spirit. They generated the sentiment that impelled men to patriotic and heroic sacrifice in the cause of liberty; they sustained generation after generation in the recurring struggles for equality before the law; they formed and preserved a public morality which prevented violations of the principles of the Great Charter, and they were of incalculable inspiration and encouragement to Englishmen and Americans, if not to the whole world. It is the great traditions of Magna Carta that have made its heritage so valuable and its service to humanity immortal. It is because of its traditions that Magna Carta is sacred to us, as it was to our forefathers. Statesmen and lawyers, dealing with the practical problems of constitutional government, are unwilling to minimise the value of Magna Carta and our debt to the generation that forced it from King John, merely because many of its underlying principles may not have been fully grasped by its framers and many of its traditions may be based on legends and myths. It is enough that the true spirit of civil liberty and political justice was there.

Many of us, however, venture to believe that the unknown author of the original Articles of the Barons or of the Great Charter itself—if it was not the learned STEPHEN LANGTON, who had been educated at the University of Paris and was familiar with Roman and canonical law and the charters of liberties which the Kings of France had been granting to their subjects—knew far more of the underlying and vivifying principles of jurisprudence and politics than some of our modern critics are willing to attribute to that generation. Be this as it may, the political instinct of our race must have guided it to the eternal truths upon which the Great Charter of Liberties was based, even though its authors imperfectly comprehended these truths, or did not comprehend them at all. A single phrase like "the law of the land" in a political document is often wiser than is realized not merely by the masses who acclaim it, but even by the leaders who adopt it. It may truly serve to compress into very small compass and preserve the relics of ancient wisdom, notwithstanding the fact that later generations are frequently puzzled to decipher its contents or dis-

* Address before the Constitutional Convention of the State of New York at the Celebration of the Seven-hundredth Anniversary of Magna Carta, 15th June, 1915, by WILLIAM D. GUTHRIE, Ruggles Professor of Constitutional Law in Columbia University Law School.

cover their meaning. Such a phrase "may lock up truths," as has been well said of the language of a nation, "which were once well known, but which, in the course of ages, have passed out of sight and been forgotten. In other cases it may hold the germs of truth, of which, though they were never plainly discerned, the genius of its framers caught a glimpse in a happy moment of divination, . . . and often it would seem as though rays of truth, which were still below the intellectual horizon, had dawned upon the imagination as it was looking up to heaven."

First and foremost among the cardinal principles of Magna Carta was the idea, then beginning again to germinate throughout Europe, that the individual has natural rights as against the government, and that those rights ought to be secured to him by fundamental laws which should be unalterable. No one can study the history of European politics during the great constructive thirteenth century without being impressed with the fact of the revival of this conception in men's minds, not only in England but on the Continent, where it manifested itself in varying forms and in different connections. I say revival, because the same conviction had prevailed hundreds of years before in both Greece and Rome, but had been lost for centuries.

The idea that the fundamental laws of the land—the pious and good old laws of ALFRED and of EDWARD, as the English called them, or *les lois fondamentales*, as the French were then calling them—were unalterable, and that any governmental regulation, or edict, or statute to the contrary should be treated as void and null, is plainly enunciated in the first chapter of Magna Carta, where King JOHN grants to the freemen of the kingdom "all the underwritten liberties, to be had and held by them and their heirs, of us and our heirs forever," and in chapter sixty-one, where the King covenants that he "shall procure nothing from anyone, directly or indirectly, whereby any part of these concessions and liberties might be revoked or diminished; and if any such thing has been procured, let it be void and null." It is certain that during the thirteenth and fourteenth centuries the theory generally prevailed in England that the concessions and liberties of the Great Charter had been granted forever and were unalterable by the King, or even by Parliament. Thus, we find Parliament enacting in 1369, with the consent of EDWARD III., that the Great Charter of Liberties should be "holden and kept in all points, and if any statute be made to the contrary, that shall be holden for none"

[*To be continued.*]

Reviews.

Books of the Week.

The Journal of the Society of Comparative Legislation. January, 1916. John Murray.

Correspondence.

Increase of Rent, etc., Act.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—There does not appear to be anything in this Act confining its operation to mortages of leasehold interests, but the rules printed in the current issue of your Journal are silent as to mortgages of freehold interests. In the latter case, to what court are applications to be made under section 1, sub-section 4? F. R. B.

Feb. 11.

[The second proviso to section 1, sub-section 4, applies only to leasehold interests, and rule 2 is correspondingly restricted. The Act applies also to freehold interests, but as to these the county court appears to have no special jurisdiction under the Act.—ED. *S.J.*]

A Coroner's Daughter in Need.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—I shall be grateful if you can allow me to make an appeal on behalf of a very deserving case. Doubtless many of your readers will remember the late Sir John Humphreys. He died twenty years ago, and was Coroner for Middlesex. Perhaps among your readers there are some of his old friends, who still remember his personality and his attainments. It is on behalf of Sir John Humphreys' daughter, Mrs. Ellen Hunt Foulston, that I wish to appeal. She is a candidate for a pension from the Royal Hospital for Incurables, Putney Heath. The next election will be held in May. She is an incurable invalid, crippled with rheumatoid arthritis, and in the autumn of her life she has been left without any income whatever. Her sole means of support are derived from a few old friends, but this, with all the generosity they have shewn, cannot be regarded as permanent.

I am informed that for success at an election of the Royal Hospital for Incurables about 1,400 or 1,500 votes are necessary, and, large as this number is, I think there should not be great difficulty in securing them for Mrs. Hunt Foulston. I shall be happy to send some of the candidate's cards to anyone who is prepared to help. I ought also to mention that votes for one election are available at the rate of four per guinea. Full information on this point may be obtained from the Secretary of the Royal Hospital for Incurables, at the City offices, 4, St. Paul's-churchyard.

Mrs. Alec Tweedie, Sir Arthur Downes, M.D., and Major W. W Grantham have kindly promised their active support, and, with the assistance of your readers, I am hoping for success at the election this next May. JOHN GAY.

137, Upper Richmond-road, Putney, S.W., Feb. 16.

The War Condition in Probates

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—I am naturally interested in your remarks on the above subject in your current issue, as it was in reference to a letter of mine on the subject that you were good enough to deal with the matter some little time since.

It is gratifying to know that this question has been the subject of judicial observations, and I therefore assume, having regard to such observations, that a purchaser is entitled to be supplied with a declaration at the vendor's expense in all respects, and that nothing has been done to invalidate the grant of probate or letters of administration, as the case may be. FRANCIS G. STEED.

Sudbury, Suffolk, Feb. 12.

[The purchaser is, we think, entitled to this declaration, but under the Conveyancing Act, 1881, s. 3 (b) the expense seems to fall on the purchaser.—ED. *S.J.*]

The Increase of Rent and Mortgage Interest Act, 1915—Paving Charges.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—I observe that some of the anonymous lawyers who give free advice to the correspondents of newspapers are stating that proviso (ii) of section 1 of this Act (which empowers an owner to charge 6 per cent. on the cost of improvements) does not extend to private street works, such as paving or macadamising, executed since August, 1914.

This is causing much difficulty for owners who wish to "play the game" fairly with their tenants, but who, since the commencement of the war, have been compelled to spend two or three years' rent in complying with orders to make good the streets abutting upon their property.

The question is, Does such expenditure come within "expenditure on the *improvement* or structural alteration of a dwelling-house"? The strongest argument in favour of an affirmative answer is that a Local Authority may make any private street charges the subject of a Local *Improvement* Rate specially assessed upon the owner of the property benefited, under the Public Health Act, 1875, and that many duties as to streets and approaches originated in the Towns *Improvement* Clauses Act, 1847.

Taking the ordinary meaning of the word "improvement," it is surely clear that nothing "improves" a house more than making a good road to it instead of a bad one. That the improvement need not relate to the actual structure or curtilage is shewn by the use of the words "improvement *or* structural alteration."

Further, the Local Authorities have power, in case the paving charges are unpaid, to charge the amount on the owner's interest in the property, in priority to all existing mortgages (Public Health Act, 1875, s. 257, and *Birmingham* v. *Baker*, L. R. 17 Ch. D. 782).

It would appear, then, that these charges may be properly treated as justifying an increase in rent equal to 6 per cent. interest.

C. J. F. ATKINSON.

Otley, Feb. 10.

[See under "Current Topics."—ED. *S.J.*]

Central County Court.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—Having carried my motion at the meeting of the Law Society in favour of a central county court, I am reluctant to let the proposal go to sleep. So far as the profession is concerned, there can be no possible objection; it would make for the convenience of counsel and solicitors alike, and without any injury to the litigants; in fact, it would be considerably to their advantage, for causes in a

settled list would receive a better hearing than is often given in the county courts, whilst cases not reached for want of time could be taken on the following day instead of being adjourned, perhaps, for a month. The advantages are many and the disadvantages nil. Courts are available—some of them, such as those in the Quadrangle and two in the new wing, are rarely used at all. The only real question is whether the Court can be established without an Act of Parliament. In my opinion it can. The County Courts Act, 1888, says (section 9) that "A judge shall, whether within the district of any of his courts or not, have jurisdiction . . . with the consent of both parties to an action or proceeding, to hear and decide any matter at any place either within or without any such district." This section has already been accepted as giving authority for judges in the country to try at the Royal Courts causes originating within their districts. But, assuming the plaint to be issued in another district, are the words "whether within the district of any of his courts or not" sufficient? Personally, I think they are. At any rate, nobody would object to their being strained sufficiently to bear such an interpretation. The Lord Chancellor may direct that there shall be two judges of a district; consequently I suggest that two might be appointed to the Westminster Court, one to sit at St Martin's-lane to take the usual business of the court, and the other to sit at the Royal Courts for causes agreed to be tried there or remitted there by the Westminster judge.

At a previous meeting of the Law Society I ventured to outline a suggestion for a kind of county court clearing-house at the courts, where default summonses and subpœnas could be issued, affidavits sworn, proceedings filed, forms obtained, costs taxed, and money paid in. All this pettifogging work carries with it next to nothing in the way of fees, and solicitors are apt to neglect or refuse county court work because of the trouble and expense of sending out a clerk to a metropolitan district or corresponding with the registrar of an outside court. Again there would be no need for any statute; and the convenience to the profession would be enormous.

JAMES J. DODD.

11, New-square, Lincoln's-inn, W.C., Feb. 16.

The War Condition in Probates.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—I have read your article in to-day's issue of the SOLICITORS' JOURNAL on the war conditions now annexed to grants of probate and the reference to your previous opinion that it is *ultra vires* the Probate Registry, but that with it persons dealing with the executor or administrator should assume the grant was revoked in the absence of evidence by a declaration that no breach of the conditions had taken place; and you also mention the recent case of an insurance company refusing to pay the amount of a policy without such evidence until an action was brought, which was settled, counsel giving an undertaking that there had been no such breach.

In my opinion this attitude of a company is unwarranted and its extreme caution unnecessary. I refer you to the decision of the Court of Appeal in *Hewson* v. *Shelley*, February, 1914 (58 SOLICITORS' JOURNAL, 397) (on which you commented fully at the time, approving it). In this case an administratrix had sold part of the property of a deceased's estate before a will he had made was discovered and probated (the administration being revoked), and the title of the purchaser was upheld—a close analogy. In other words, is the executor to be deemed innocent of a breach of the war conditions till proved guilty, or is he to be assumed guilty?

This is at the present time an everyday question of importance, and your further opinion in view of *Hewson* v. *Shelley* would be interesting.

T. W. SMITH.

131, Queen's Road, Wimbledon, S.W., Feb. 12.

[If our correspondent will refer to our original remarks on the subject (59 SOLICITORS' JOURNAL, p. 141—not 149, as printed last week) he will see that we did not overlook *Hewson* v. *Shelley*, but we pointed out that that decision does not apply where a grant of administration has been determined at the date of the act in question. A sale by an administratrix was supported notwithstanding the grant to her was afterwards revoked. This does not seem to govern a case where the grant is conditional and is revoked—if such is the effect—by breach of the condition before the sale or other matter.—ED. *S.J.*]

Mr. Hopkins, at Bow-street Police-court, on Monday, had before him the first prosecution under the new order relating to the delivery of letters at accommodation addresses. The defendant, Arthur Woodman, a newsagent, of Little White Lion-street, W.C., was fined £2 2s. for delivering letters to persons without obtaining a receipt in a book kept for that purpose, and for failing to enter in the book particulars required by a police order.

CASES OF THE WEEK.

Court of Appeal.

CARNELL v. HARRISON. No. 1. 10th February.

SETTLEMENT — MARRIAGE SETTLEMENT BY INFANT — REVERSIONARY INTEREST—REPUDIATION—REASONABLE TIME FOR EXERCISE OF RIGHT.

An infant who has executed a settlement may repudiate it after he comes of age, provided the right to do so is exercised within a reasonably short time. The fact that the property is reversionary makes no difference to the rule, and the settlor is not entitled to wait until it has fallen into possession before acting.

Edwards *v.* Carter (1893, *A. C.* 360) *and* Carter *v.* Silber (1892, 2 *Ch.* 278) *applied.*

Re Jones, Farrington *v.* Forrester (1893, 2 *Ch.* 461) *overruled.*

Appeal by the plaintiff from a decision of Neville, J. (reported 60 SOLICITORS' JOURNAL, 121). The plaintiff, on 29th December, 1895, being then an infant aged twenty, executed a settlement in contemplation of her marriage, which took place next day. She thereby settled certain reversionary interests expectant on the death of her mother, upon trust in favour of herself for life, with remainder to the children of the marriage, and in default of children to attain a vested interest, for the settlor absolutely, the husband taking no interest under the settlement. Three children were born of the marriage in 1896, 1898 and 1902, and all were still living. In 1906 the plaintiff abandoned her husband and children, and since then had lived by herself in various places, mostly in America, without having had any communication with them. The children since then had been maintained by the husband, and brought up in the care of their grandmother. In 1914 the plaintiff desired to make a will, but finding that all her property was subject to the settlement, commenced this action against the trustees, claiming to have it set aside. The plaintiff's mother was still alive, and therefore the property was still in reversion. She contended that she had only recently become aware of her rights, and that as the property had not yet fallen into possession, she was still entitled to repudiate the settlement. Neville, J., dismissed the action, and the plaintiff appealed.

THE COURT dismissed the appeal.

Lord COZENS-HARDY, M.R., said that, after listening to the careful argument for the appellant, he thought the decision below was right. [Having stated the facts, his lordship proceeded:] The contract of an infant was voidable, and might be repudiated within a reasonable time after coming of age. That doctrine, it was said, was modified in the present case by two circumstances, the fact that the husband brought no property into the settlement, and the fact that the property settled was still in reversion. His lordship had never heard the argument before that because property was settled by only one of the spouses, therefore the settlor had a right of revocation. Then it was said the lady could appoint among her children as she pleased. The three children of the plaintiff were within the marriage consideration, and could sue the trustees for any breach of trust. The eldest daughter was now twenty, and could, with the leave of the court, settle her interest under the settlement upon her marriage. The case was covered by the important authority of *Edwards* v. *Carter* (1893, A. C. 360), where the House of Lords held that a period of between four and five years after the settlor came of age could not possibly be regarded as a reasonable time after the lapse of which he could repudiate the settlement. And as Lord Macnaghten there said, everyone who is of sufficient age and intelligence to execute a deed, whether an infant or a man of full age, must be taken to know the contents of the instrument which he executes. There was nothing in the present case to qualify the general principles there laid down. The appellant had relied on a decision of North, J., in *Re Jones* (1893, 2 Ch. 461), who held that the fact that an interest was reversionary was sufficient to excuse the settlor from not having repudiated it, when she could have done so within a reasonable time. That case had no support from any prior decision, and must be taken to have been overruled by the House of Lords in *Edwards* v. *Carter* (*supra*), though it was not cited therein. The appeal would be dismissed.

PHILLIMORE, L.J., who said the language of North, J., in *Re Jones* (*supra*), came very near to a contradiction of that of Lord Watson in *Edwards* v. *Carter*, and

WARRINGTON, L.J., who said that the power to avoid a contract by an infant when he came of age was a rule of law which might well be attributed to a knowledge of the settlor, delivered judgment to the same effect.—COUNSEL, *Gilbart Smith; W. J. Whittaker.* SOLICITORS, *A. F. V. Wild; Hardisty, Rhodes, & Hardisty.*

[Reported by H. LANGFORD LEWIS, Barrister-at-Law.]

ZADIG v. HALLIDAY. No. 2. 9th February.

HABEAS CORPUS—NATURALIZED BRITISH SUBJECT—DETENTION IN INTERNMENT CAMP—VALIDITY OF REGULATION EMPOWERING DETENTION—DEFENCE OF THE REALM CONSOLIDATION ACT, 1914 (5 GEO. 5, C. 8), S. 1 (1)

By the Defence of the Realm Consolidation Act, 1914, *it is provided that "His Majesty in Council has power . . . to issue Regulations for securing the public safety and the defence of the realm."*

Purporting to act in pursuance of the power so given, Regulations,

dated 10th June, 1915, were made by the Home Secretary, of which Regulation 14 (b) was as follows:—"Where on the recommendation of a competent naval or military authority or of one of the advisory committees hereinafter mentioned, it appears to the Secretary of State that for securing the public safety or the defence of the realm it is expedient, in view of the hostile origin or associations of any person that he should be subjected to such obligations and restrictions as are hereinafter mentioned, the Secretary of State may by order require that person forthwith, or from time to time, either to remain in, or to proceed to and reside in, such place as may be specified in the order, and to comply with such directions as to reporting to the police, restriction of movement, and otherwise as may be specified in the order, or to be interned in such place as may be specified in the order."

The Divisional Court having discharged a rule nisi *for* habeas corpus *obtained at the instance of an interned naturalized British subject, the applicant appealed to the Court of Appeal, and submitted that the liberty of the subject could not have been left in the hands of the executive, and that the Act of* 1915, *not specifically directing that a subject might be interned for the purpose of securing the public safety or the defence of the realm, the Regulation under which he had been so interned was* ultra vires.

Held, dismissing the appeal, that the decision of the Divisional Court was right; that the Regulation in question was not ultra vires *the powers conferred by the Defence of the Realm Act,* 1914, *and that the applicant for the rule was lawfully detained.*

The applicant for a rule *nisi* appealed against a decision of a Divisional Court (Lord Reading, L.C.J., Lawrence, Rowlatt, Atkin and Low, JJ.) given on 20th January, which discharged a rule *nisi* for a writ of *habeas corpus* with respect to the applicant, one Arthur Zadig, who had been detained at an internment camp. The rule was directed to Sir Frederick Loch Halliday, the commandant of the camp, to shew cause why a writ of *habeas corpus* should not issue directing him to bring up the body of the applicant. The facts sufficiently appear from the judgment. At the hearing of the appeal counsel for the applicant were alone heard.

SWINFEN EADY, L.J., in dismissing the appeal, said the point raised by the appeal was a short one. The appellant was a person of hostile origin in the sense that he was a person who was born in Germany of German parents. He came to live in England, and had obtained letters of naturalization, and so was a British subject. At present he was interned, and his complaint was that he was wrongfully interned. He was interned under a Regulation which, he said, was *ultra vires*, and, therefore, had no binding force. It was a Regulation made under the Defence of the Realm Consolidation Act, 1914, which by section 1 provided that "His Majesty in Council has power during the continuance of the present war to issue Regulations for securing the public safety and defence of the realm, and as to the powers and duties for that purpose of the Admiralty and Army Council and of the members of His Majesty's forces and other persons acting on his behalf; and may by such Regulations authorize the trial by Courts-martial, and in the case of minor offences by courts of summary jurisdiction, and punishment of persons committing offences against the Regulations, and in particular against any of the provisions of such Regulations designed—." Regulation 14 (B) of the Regulations issued under the Act of 1914, and made on 10th June, 1915—the one the Court had to consider—provided for the appointment of advisory committees, to be presided over by a person who held or had held high judicial office, to whom any person interned under such an order was entitled to make representations against the order, and to have these representations duly considered by one of the advisory committees. That was the security which an interned person had that proper consideration would be given to the facts of his case. The appellant did not say that Regulation 14 (B) did not authorize his internment, or that there had been any irregularity in the proceedings, but he said it was inoperative as being beyond the powers conferred by Parliament, and constituted an interference with the liberty of the subject, and was not justified by the terms of the statute. In his lordship's opinion the Regulation was one which was clearly within the powers given by the statute—powers which in this case were expressed in explicit and unambiguous language. But the argument for the appellant was that, although the Regulation might appear to be within the very general powers given by the statute as to which there was no ambiguity, yet from the very wideness of such powers some limit must be imposed. In a question of such supreme and vital importance as the liberty of the subject, that alone could be restricted by a statute in most explicit terms, and could not depend on Regulations passed by the executive. The argument put forward for the appellant really came down to this: that, however dangerous a person might be, and however necessary for the safety of the public it was that he should be interned, the Act of 1914 gave no direct authority in terms to intern him, and the Regulations going beyond the powers given by the statute, under which he could be interned, were *ultra vires*. The appellant contended that for these reasons he ought never to have been interned at all, and should be released. In his lordship's opinion there was no substance in that argument, and his appeal failed.

PICKFORD and BANKES, L.JJ., agreed. The appeal was accordingly dismissed.—COUNSEL, for the appellant, *Leslie Scott*, K.C., and *Patrick Hastings*; for the Crown, *the Attorney-General* (*Sir F. E. Smith*, K.C.), and *Branson*. SOLICITORS, *Warren & Warren*; *The Treasury Solicitor*.

[Reported by ERSKINE REID, Barrister-at-Law.]

High Court—Chancery Division.

***Re* ROBY. SHERBROOKE *v.* TAYLOR.** Peterson, J. 20th January.

ADMINISTRATION ACTION—CREDITOR'S ACTION—ORDER FOR ADMINISTRATION—COSTS NOT MENTIONED—ACCOUNTS—FURTHER CONSIDERATION—PLAINTIFF'S RIGHT TO HAVE HIS COSTS—PRACTICE—R.S.C., LV., R. 10.

Where a plaintiff obtains judgment in an action for administration and nothing is said about costs, he is entitled to his costs down to judgment, and he is also entitled to the costs of taking accounts after the judgment, because they are part and parcel of the machinery of carrying out the judgment in respect of which he has already been allowed his costs. Protection is afforded to the estate against unnecessary or improper administration proceedings by R.S.C., ord. 55, *r.* 10.

The principle sought to be deduced from Croggan *v.* Allen (1882, 22 *Ch. D.* 101) *is not applicable to such a case as this.*

This was a further consideration of an action in which a creditor for a small sum had obtained against an executor an order for administration of a deceased testator's insolvent estate. When the order was made in 1913 by Joyce, J., nothing was said about costs. The further consideration was adjourned by Eve, J., until the defendant had got in the rest of the estate, and on that application the learned Judge declined to discuss the question of the plaintiff's costs, the defendant opposing the plaintiff's application for his costs. The rest of the estate having been got in and realized, the question of costs now came up for discussion on the adjourned further consideration, and counsel for the plaintiff contended that the matter was not a subject for argument at all, but that the plaintiff was entitled to his costs as a matter of course, and he referred (*inter alia*) to *Re Medland, Eland* v. *Medland* (1890, 41 Ch. D. 476), and *Re Gardner* (1911, W. N. 155). Counsel for the defendant submitted that the plaintiff should not have his costs, or even if entitled to his costs down to judgment, he should not be entitled to his costs of taking the subsequent accounts, because he contended the net result of the action had not been advantageous to the estate, and he referred to many cases, including *Croggan* v. *Allen* (1882, 22 Ch. D. 101), *Re Blake* (1885, 29 Ch. D. 913), *Williams* v. *Jones* (1886, 34 Ch. D. 120 and *Re Ormiston* (1887, 58 L. T. 74).

PETERSON, J., after stating the facts, referred to ord. 55, r. 10, and said: I have always understood that if a plaintiff obtains judgment in an action for administration and nothing is said about costs, that is an admission that he is entitled to his costs down to judgment, and that being so, I am of opinion that it follows that, in the absence of misconduct, the plaintiff is entitled to have his costs of taking the accounts, because in taking them properly he was only doing what he had been ordered to do by a judgment in respect of which he had already been allowed his costs. I am of opinion that this is the settled practice, and that in this case the plaintiff's costs must be allowed accordingly.—COUNSEL, *E. Clayton*, K.C., and *J. Rutherford*; *F. H. Maugham*, K.C., and *W. D. MacConkey*. SOLICITORS, *Toulmin, Ward, & Co.*, Liverpool; *C. J. Wilson*, Liverpool.

[Reported by L. M. MAY, Barrister-at-Law.]

***Re* WIX. HARDY *v.* LEMON.** Younger, J. 20th and 21st January.

SETTLEMENT—TENANT FOR LIFE AND REMAINDERMAN—NEW LEASE AT INCREASED RENT—SETTLED LAND ACT, 1882 (45 & 46 VICT. C. 38), S. 6 (1); S. 7, SUB-SECTIONS (1) AND (2); S. 8, SUB-SECTION (1); AND S. 13, SUB-SECTIONS (1) (5) AND (6).

Unless a lease by a tenant for life under the Settled Land Acts is so improper that it amounts to an unlawful exercise of his powers under the Acts, it is quite in accord with the spirit of the Acts that the Legislature intended that the tenant for life should keep for himself everything which, under the terms of the instrument, he had succeeded in retaining for himself.

This was a summons taken out by the trustees for the purposes of the Settled Land Acts of a settlement which was created by the will of one, Fanny Wix, asking (*inter alia*) that directions might be given as to what part, if any, of the yearly rent of £2,500 reserved by a lease of the 31st December, 1914, granted by the persons constituting the tenant for life, of the settlement of certain hereditaments in Bishopsgate, London, thereby settled, ought to be set aside as capital money, and, in particular, whether the yearly sum of £1,400, being the excess of the said rent over the rent reserved by a previous lease of the said hereditaments, or any, and, if so, what part thereof ought to be so set aside up to 25th March, 1933, being the date when such previous lease would have expired if the same had not been surrendered. The following were the facts:—The testatrix died on 24th October, 1884, and the property in question was settled by her will. She was entitled at the time of her death to the fee simple in the said premises, subject to a lease then subsisting, dated 21st August, 1874, for a term of sixty years, from 25th March, 1873, at a rental of £1,100. By the will the property was devised to legal uses, under which the three first-named defendants to the summons were entitled, as tenants in common, in equal shares for their respective lives, and the persons at present interested in the estate in fee simple in remainder were the three infant defendants. In 1913 the three tenants for life entered into a conditional agreement with a certain Belgian bank, in whom the leasehold interest, of which

twenty years remained unexpired, had become vested by assignment, and the Bishopsgate Estates (Limited), who had acquired an interest in the adjoining premises, under which, by arrangement with that company, the bank was to surrender its existing lease, and a new lease for ninety-nine years was to be granted to the Estates Company at a rent of £2,500 a year, who covenanted to erect on the settled property and adjoining premises new buildings at a cost of not less than £25,000. This agreement was subsequently sanctioned by an order of the Court directing it to be carried into effect. In due course the lease was granted, and under it the increased rent of £2,500 became payable, and a question arose under the Settled Lands Acts as to who was to have the benefit of this increased rent. *Cur. adv. vult.*

YOUNGER, J., in the course of a long considered judgment, in which he stated the facts, and referred to the following sections of the Settled Land Act, 1882—namely, section 13, sub-sections (1) (5) (6); section 6, sub-section 1; section 7, sub-sections 1 and 2; and section 8, sub-section (1)—said: On the whole, I am of opinion that there are sound reasons for holding that, in every case in which a lease such as that now under review is not open to question, on the ground of impropriety or otherwise, the Act intended that it should be operative in accordance with its tenor. Unless the lease is so improper as to amount to an unlawful exercise of his powers by the tenant for life, it is quite in accord with the spirit of the whole Act that the Legislature intended that the tenant for life should keep for himself everything which under the terms of the instrument he had succeeded in retaining for himself. Under these circumstances, I am of opinion that the declaration must be that no portion of the rent is to be retained or capitalized.—COUNSEL, *Arnold Jolly; H. C. Bischoff; A. F. Topham; E. L. Riviere.* SOLICITORS, *Brighten & Lemon; Burne & Wykes.*

[Reported by L. M. MAY, Barrister-at-Law.]

CASES OF LAST SITTINGS

Judicial Committee of the Privy Council.

THE "ODESSA" (Cargo ex). THE "WOOLSTON" (Cargo ex).
19th, 20th, and 21st July; 11th November.

PRIZE LAW—JURISDICTION OF PRIZE COURT—CARGO—RIGHTS OF PLEDGEES—BOUNTY OF CROWN—CIVIL LIST ACT, 1910 (10 ED. 7 AND 1 GEO. 5, C. 28).

Cargoes of nitrate of soda were sold by neutrals abroad to a German firm, and were shipped at Valparaiso before the outbreak of the war in The Odessa, *a German ship, and in* The Woolston, *an English ship. The appellants, London bankers, who were British subjects, accepted bills of lading in favour of the sellers against these cargoes, and were liable for large sums which they had paid or were liable to pay under the bills.* The Odessa *was captured at sea, and* The Woolston *was seized at Liverpool, to which port she had been ordered by the appellants, who claimed both the cargoes.*

Held, affirming the decision of the President (Sir S. Evans), that the rights of pledgees of enemy cargo were not regarded in the Prize Court, as enemy ownership was the sole criterion of the liability to condemnation; but that the Crown's prerogative power of bounty to redress hardships in neutrals and subjects still existed, and had not been impaired by the Civil List Acts passed at the commencement of each reign from that of 1 Geo. 4, c. 1, which affected Droits of the Admiralty and Droits of the Crown.

Decision of Evans, P. (*reported* 59 SOLICITORS' JOURNAL, 189; 1915, *P.* 52) *affirmed.*

Decision of the Committee *in the case of* The Roumanian (*reported* ante, *p.* 58) *applied in the case of the cargo condemned on board the British ship* Woolston.

Consolidated appeals by the claimants, Messrs. J. Henry Schroeder & Co., British subjects, against two decrees of the President condemning enemy cargoes shipped on two vessels, *The Odessa* and *The Woolston*. The appeals were heard before a Board consisting of Lords Mersey, Parker, Sumner and Sir Edmund Barton, and at the close of the arguments their lordships took time for consideration. The opinion of the Board was delivered by Lord Mersey, who mentioned that, although there was very much in common in the points arising for decision, he thought it desirable to consider each case separately. The main difference was that *The Odessa* was a German-owned ship, while *The Woolston* was British owned. The facts in the case of *The Odessa*, as stated by his lordship, were shortly that drafts for a total amount of £41,153 (said to be the full price of the cargo, which was nitrate of soda) were drawn by the sellers, Messrs. Weber & Co., of Chile, upon the appellants, and accepted by them on 9th June, 1914, in exchange for the bill of lading. He then referred to the capture of *The Odessa* on the high seas on 19th August, by H.M.S. *Caronia*, and the institution of a suit by the Procurator-General claiming condemnation of both ship and cargo as lawful prize. The drafts as they fell due were paid by the appellants. The ship was condemned, as to which no question was raised, but in respect of the cargo the appellants intervened, and by their claim alleged it to be their property as holders for value of the bill of lading therefor, and as British property not liable to condemnation. The President condemned the cargo on the ground that the general property was in the German company at the date of the seizure, and the appellants, as pledgees, were not entitled to any precedence over the Crown.

THE CARGO EX *Odessa*.

Lord MERSEY said that in this case their lordships were of opinion that the President was right in the inferences which he drew from the facts he had stated. Nor did the appellants dispute the correctness of these inferences, but they said that the inferences, though correct, did not justify a decree, which had the effect of forfeiting their rights as pledgees. Thus, the question in the appeal was whether in case of a pledge such as existed here, a Court of Prize ought to condemn the cargo, and, if so, whether it should direct the appellants' claim to be paid out of the proceeds to arise from the sale thereof. All civilized nations up to the present time had recognized the right of a belligerent to seize enemy ships and enemy cargoes. But such seizure did not, according to British prize law, affect the ownership of the thing seized. Before that could happen the thing seized, be it ship or goods, must be brought into the possession of a lawfully-constituted Court of Prize, and the captor must there ask for and obtain its condemnation as prize. The suit might be initiated by the representative of the capturing State, in this country by the Procurator-General. It was a suit *in rem*, and the character of the thing seized had to be inquired into and guided the judgment, which had international force. Thus it came about that in determining the national character of the thing seized ownership was taken as the criterion—the property or *dominium* as opposed to any special rights created by contracts or dealings between individuals, without considering whether these special rights were or were not, according to the municipal law applicable to the case, proprietary rights or otherwise. It was not a mere rule of practice or convenience: it was not a rule of thumb. It laid down a test capable of universal application, and therefore peculiarly appropriate to questions with which a Prize Court had to deal. If special rights of property created by the enemy owner were recognized in a Prize Court, it would be easy for such owner to protect his own interest upon shipment of the goods to or from the ports of his own country. Again, if a neutral pledgee were allowed to use the Prize Court as a means of obtaining payment of his debt, instead of being left to recover it in the enemy's court, the door would be opened to the enemy for obtaining fresh banking credit for his trade, to the great injury of the captor belligerent. From before the days of Lord Stowell, acting on this rule, the Courts of Prize in this country had refused to recognize or give effect to any right in the nature of a special property or interest or any mortgage or contractual lien created by the enemy whose vessel or goods have been seized. Liens, arising otherwise than by contract, stood on a differnt footing, and involved different considerations; but even as to these it was doubtful whether the Court would give effect to them. The following cases were then referred to by Lord Mersey:—*The Frances* (8 Cranch, 418), *The Tobago* (5 Ch. Rob. 218), *The Mary* (9 Cranch, 126), *The Aina* (1 Spink's Prize Cases, 8), *The Hampton* (5 Wall, 372), *The Battle* (6 Wall, 498), *The Rossia* (2 Russ. & Jap. Prize Cases, 43), *The Carlos F. Roses* (177 U. S. Rep. 655), and *Sewell* v. *Burdick* (10 App. Cas. 74). It was, moreover, to be observed that, if the right claimed clothed the pledgees with ownership, it precluded the Court from making any decree at all of condemnation. The ownership by which a Court of Prize was guided could not subsist both in the pledgees and in the pledgors. If it existed in the appellants, as pledgees, no decree could be made against them, for they were British subjects, and the interest left in the enemy subject could not be condemned, for *ex hypothesi* it was not an interest which included ownership. [See *The Ariel* (11 Moo. P. C. 119).] But when the nature of the right of a pledgee to sell was examined, it would be seen that the so-called "special" property which it was said to create was in truth no property at all. [See *Mores* v. *Conham* (Owen 123, 7 Jac. 1) and *Donald* v. *Suckling* (L. R. 1 Q. B., at p. 613).] For these reasons the cargo remained enemy cargo, and, according to the rule which regulated the Court of Prize, was liable to condemnation. But it was said that in Lord Stowell's time there was a possibility of redressing any individual hardship which might be caused to neutral or subject by an appeal to the bounty of the Crown, and that in some way or other the Crown had lost its power of bounty, and therefore the position of pledgees was altered. The conclusion the Board had come to was that the Crown still retained power of bounty for the redress of hardships, which was not affected by the Civil List Acts passed at the commencement of each reign from that of George 4. While so holding, their lordships desired to express no opinion whether the present case was one in which this power of the Crown ought to be exercised. The result, therefore, of their lordships' opinion was that the decision arrived at by the learned President must stand affirmed, and they would humbly advise His Majesty that the appeal should be dismissed.

THE CARGO EX *Woolston*.

The above judgment in the case of the *Cargo ex Odessa* applied equally to this case. The only difference between the two cases was that *The Odessa* was an enemy ship, and *The Woolston* was a British ship. Their lordships were of opinion that enemy goods on board both British and neutral ships at the beginning of hostilities were alike the

proper subject of maritime prize. The point had been more fully dealt with in the recent judgment in the case of *The Roumanian* (60 SOLICITOR'S JOURNAL 58). The fact that this was a British ship was unimportant unless it was necessary for the Court to act on some presumption arising from the character of the ship. Here there was no such presumption, as the whole facts were in evidence, and the enemy character of the cargo was fully established. In this case also their lordships would humbly advise His Majesty that the appeal should be dismissed.—COUNSEL, for the appellants, *Sir Robert Finlay*, K.C., *MacKinnon*, K.C., and *Dunlop*; for the Crown, *Sir Edward Carson*, K.C., *Maurice Hill*, K.C., *Theobald Mathew*, and *T. H. T. Case*. SOLICITORS, *Stibbard, Gibson, & Co.*; *The Treasury Solicitor*.

[Reported by ERSKINE REID, Barrister-at-Law.]

High Court—Chancery Division.

GLYN v. THE WESTERN FEATURE FILM CO. Younger, J. 5th and 9th November; 21st December.

COPYRIGHT—NOVEL—INFRINGEMENT BY KINEMATOGRAPH FILM—BURLESQUE—IMMORAL EPISODES—ASSISTANCE OF THE COURT—COPYRIGHT ACT, 1911 (1 & 2 GEO. 5, c. 46), s. 1.

In considering whether the copyright in a novel has been infringed by a kinematograph film, the true inquiry is whether, keeping in view the idea and general effect created by the perusal of the novel, there is such a degree of similarity as would lead one to say that the film was a reproduction of the novel, or of a substantial part of it.

Semble, *a burlesque is not an infringement of copyright, either* (1) *on the ground that copyright, like patent-right, is only granted for the purpose of preventing persons from unfairly availing themselves of the works of others; or* (2) *on the ground that a burlesque is not a colourable imitation; or* (3) *on the ground that infringement cannot take place where the defendant has bestowed such mental labour on what he has taken, and has subjected it to such a revision and alteration as to produce an original result.*

The principles laid down in Hanfstaengl *v.* The Empire Palace (1894, 3 *Ch.* 109) *and* Francis, Day, & Hunter *v.* Feldman & Co. (1914, 2 *Ch.* 728) *applied.*

On the ground of public policy the Court will not protect a work which it considers to be a work of immoral tendency.

In this case a company exhibited a burlesque film of the incidents of the novel written by Eleanor Glyn called "Three Weeks," and Eleanor Glyn brought an action against the company for infringement of her copyright in the novel, and for an account of profits, and to have the offending film delivered up, and for an injunction to restrain the company from exhibiting it. The film was called "Pimple's Three Weeks (without the Option)," and it was said to be with apologies to Eleanor Glyn. The company denied that the film was an infringement, and also contended that a burlesque could not be an infringement of the copyright in a serious work. *Cur. adv. vult.*

YOUNGER, J., in the course of a long written judgment, after stating the facts, said: After a careful consideration of the novel and films, I come to the conclusion of fact that the films do not constitute any infringement of the plaintiff's copyright in the novel. This view of the case makes it unnecessary that I should do more than refer, in passing, to the important point raised by the defendants that their film was a mere burlesque of the plaintiff's novel, and that a genuine burlesque of a serious work constituted no infringement of copyright, although it might under certain conditions justify an action in the nature of slander of goods. Making all allowance for the fact that before the Act of 1911 literary copyright did not include the acting right, it is certainly remarkable that no case can be found in the books in which a burlesque even of a play has been treated as an infringement of copyright. It may be that, so far as the English law is concerned, one reason is that the older cases insisted upon the necessity for establishing that the alleged piracy was calculated to prejudice the sale or diminish the profits, or supersede the objects of the original work, whereas a burlesque is often the best possible advertisement of the original. More probably, however, the reason is to be found involved in such observations as those of Lord Lindley in *Hanfstaengl* v. *Empire Palace* (1894, 3 Ch. 109, at p. 128), or in such a decision as that of the Court of Appeal in *Francis, Day, & Hunter* v. *Feldman & Co.* (1914, 2 Ch. 728), or in the principle that no infringement of a plaintiff's rights takes place where a defendant has bestowed such mental labour upon what he has taken, and has subjected it to such a revision and alteration as to produce an original result. The same principle is illustrated in the law of designs by such cases as *Thom* v. *Lyddall* (1872, 26 L. T. 15) and *Barran* v. *Lomas* (1880, 28 W. R. 973), and if in considering whether such a literary work as a novel has been infringed by such a thing as a kinematograph film, the true inquiry is, as I think it must be, whether, keeping in view the idea and general effect created by a perusal of the novel, there is such a degree of similarity as would lead one to say that the film is a reproduction of the novel, or of a substantial part of it, then, in my opinion, the answer in the present case must be in the negative. If, therefore, it was necessary to express an opinion upon this aspect of the case, I should decide that on this ground also the plaintiff failed. More important, from a public point of view, is the further fact that, in my opinion, the plaintiff's work is of a highly immoral tendency, and on this ground, even if there had been an infringement, is disentitled to the protection of the Court. Moreover, the films themselves, in my opinion, contained incidents and movements of an indecently offensive character, which would equally have disentitled them in their present form to the protection of the Court in an action for infringement; and since in a copyright action the plaintiff is in the position of a person adopting and claiming the benefit derived from the infringing work, this ground, too, is fatal to the plaintiff's case. Under the circumstances the action must be dismissed, without costs on either side.—COUNSEL, *Clausen*, K.C., and *J. MacGillivray*; *Terrell*, K.C., and *C. Hartree*; *G. R. Northcote*. SOLICITORS, *Field, Roscoe, & Co.*; *Bower, Cotton, & Bower*; *Snow, Fox, & Higginson*, for *William Bell & Sons*, Sutherland.

[Reported by L. M. MAY, Barrister-at-Law.]

New Orders, &c.

War Orders and Proclamations, &c.

The *London Gazette* of 11th February contains the following:—

1. A Foreign Office Notice, dated 11th February, making additions or corrections to the lists of persons to whom articles to be exported to China may be consigned.

The *London Gazette* of 15th February contains the following:—

1. A Proclamation, dated 15th February (printed below), prohibiting the importation into the United Kingdom of certain articles.

2. An Order in Council, dated 15th February (printed below), further amending the Defence of the Realm (Consolidation) Regulations, 1914.

3. An Order in Council, dated 15th February (printed below), further amending the Defence of the Realm (Liquor Control) Regulations, 1915. The original Regulations are dated 10th June, 1915 (59 SOLICITORS' JOURNAL, p. 563), and were amended by Order in Council dated 14th October (*ante*, p. 13).

4. An Order in Council, dated 15th February (printed below), applying the Defence of the Realm (Liquor Control) Regulations to the "Southern Military and Transport Area." This includes the Southampton Area, which was numbered III. in the Schedule to the first Order (6th July, 1915; 59 SOLICITORS' JOURNAL, p. 615), and the Portsmouth Area, which was defined in paragraph V. in the Schedule to the Order of 10th November (*ante*, p. 61).

5. An Order in Council, dated 15th February (printed below), extending the "Bristol Area" as defined in paragraph I. of the original Order of 6th July (*ubi supra*).

6. An Order in Council, dated 15th February (printed below), forbidding British steamships, exceeding 500 tons gross, to proceed on any voyage except with a Board of Trade licence.

7. An Order in Council, dated 15th February, extending the Evidence (Amendment) Act, 1915, to the Isle of Man.

8. An Order in Council, dated 15th February, extending to the Isle of Man the Defence of the Realm Amending Regulations of 30th November, 1915 (*ante*, p. 123), except Regulation 14c.

9. An Order in Council, dated 15th February (printed below), under section 17 of the Navy and Marines (Property of Deceased) Act, 1865, cancelling clause 33 of an Order in Council of 28th December, 1865, made under the Act, and substituting a new clause.

10. A Foreign Office Notice, dated 15th February, making additions or corrections to the lists of persons to whom articles to be exported to Siam may be consigned.

A Proclamation

FOR PROHIBITING THE IMPORTATION OF PAPER-MAKING MATERIALS, PAPER, TOBACCO, FURNITURE WOODS, AND STONES AND SLATES INTO THE UNITED KINGDOM.

Whereas by Section forty-three of the Customs Consolidation Act, 1876, it is provided that the importation of arms, ammunition, gunpowder, or any other goods may be prohibited by Proclamation:

And whereas it is expedient that the importation into the United Kingdom of certain goods of a bulky character should be prohibited as hereinafter provided:

Now, therefore, We, by and with the advice of Our Privy Council, in pursuance of the said Act and of all others powers enabling Us in that behalf, do hereby proclaim, direct and ordain as follows:—

As from and after the First day of March, 1916, subject as hereinafter provided, the importation into the United Kingdom of the following goods is hereby prohibited, viz.:—

All materials for the manufacture of paper, including wood pulp, esparto grass, and linen and cotton rags.

Paper and cardboard (including strawboard, pasteboard, millboard and wood pulp board) and manufactures of paper and cardboard.

All periodical publications exceeding 16 pages in length, imported otherwise than in single copies through the post.

Tobacco, unmanufactured and manufactured (including cigars and cigarettes).

Furniture woods, hard woods and veneers.

Stones and slates.

Provided always, and it is hereby declared, that nothing in this Proclamation shall apply to any goods of the descriptions specified which are imported under licence given by or on behalf of the Board of Trade, and subject to the provisions and conditions of such licence.

This Proclamation may be cited as the Prohibition of Import (Paper, Tobacco, Furniture Woods, and Stones) Proclamation, 1916.
15th February.

Defence of the Realm Regulations.

ORDER IN COUNCIL.

[Recitals.]

It is hereby ordered that the following amendments be made in the said Regulations :—

1. After Regulation 2A the following regulation shall be inserted :—

"2B. It shall be lawful for the Admiralty or Army Council or the Minister of Munitions to take possession of any war material, food, forage and stores of any description and of any articles required for or in connection with the production thereof."

2. For Regulation 7 the following regulation shall be substituted :—

"7. The Admiralty or Army Council or the Minister of Munitions may by order require the occupier of any factory or workshop in which arms, ammunition, food, forage, clothing, equipment or stores of any description or any articles required for the production thereof, are or may be manufactured or in which any operation or process required in the production, alteration, renovation or repair thereof is or may be carried on, to place at their disposal the whole or any part of the output of the factory or workshop as may be specified in the order, and to deliver to them or to any person or persons named by them the output or such part thereof as aforesaid in such quantities and at such times as may be specified in the order : and the price to be paid for the output so requisitioned shall, in default of agreement, be determined by the arbitration of a judge of the High Court selected by the Lord Chief Justice of England in England, of a judge of the Court of Session selected by the Lord President of the Court of Session in Scotland, or of a judge of the High Court of Ireland selected by the Lord Chief Justice of Ireland in Ireland.

"In determining such price regard need not be had to the market price, but shall be had to the cost of production of the output so requisitioned and to the rate of profit usually earned in respect of the output of such factory or workshop before the war, and to any other circumstances of the case.

"If the occupier of the factory or workshop fails to comply with the order, or without the leave of the Admiralty or Army Council or the Minister of Munitions, delivers to any other person any part of the output of the factory or workshop to which the order relates, he shall be guilty of an offence against these regulations.

"For the purpose of ascertaining the amount of the output of any factory or workshop or any plant therein and the cost of production of such output, and the rate of profit usually earned in respect of the output of such factory or workshop before the war, the Admiralty or Army Council or the Minister of Munitions may require the occupier of any such factory or workshop, or any officer or servant of the occupier, or where the occupier is a company any director of the company, to furnish to the Admiralty or Army Council or the Minister of Munitions such particulars as to such output, cost, and rate of profit as they may direct, and may require any such particulars to be verified in such manner as they may direct, and if any such person fails to comply with any such requirement he shall be guilty of an offence against these regulations."

3. At the end of paragraph (*a*) of Regulation 8A the following words shall be inserted :—

"and to require returns as to the nature and amount of work done in any factory or workshop."

At the end of the same Regulation the following paragraph shall be inserted :—

"Where under this regulation any return has been required or any directions regulating the priority to be given to work at any factory, workshop, or other premises, have been given, and any person in any such return or in any certificate or document given or issued for the purpose of securing priority for any work in pursuance of such directions makes any false statement or false representation, he shall be guilty of an offence against these regulations."

4. For Regulation 10A the following regulation shall be substituted :—

"10A. Where the competent naval or military authority has control of or uses or occupies any dock premises or any part of any dock premises for naval or military purposes, he may by order prohibit any person from bringing into or having in his possession within the dock premises or any limited portion thereof, or on board any vessel therein, any intoxicating liquor, except for such purposes, and subject to such conditions exceptions and restrictions as may be specified in the order, and if any person contravenes any provision of the order he shall be guilty of an offence under these regulations, and any person authorised by the competent naval or military authority, or any police constable, may search any person entering or within the premises to which the order applies, and may seize any intoxicating liquor found on him in contravention of the order."

5. At the end of Regulation 29A the following words shall be inserted :—

"nor shall this regulation apply to any persons or classes of persons who, as respects any particular factory, workshop or other place, may be exempted by order of the Admiralty or Army Council or the Minister of Munitions."

6. After the second paragraph of Regulation 40 the following paragraph shall be inserted :—

"If any member of the crew of a ship belonging to, or chartered, hired, or requisitioned by, the Admiralty or Army Council, without lawful authority gives, sells, procures or supplies, or offers to give, sell, procure or supply, any intoxicant, to or for any member of His Majesty's forces embarked as a passenger on board the ship, he shall be guilty of an offence against these regulations."

7. In paragraph (10) of Regulation 56 after the words "any power of the High Court" there shall be inserted the words "or any power of any court of summary jurisdiction."

8. For paragraph (14) of Regulation 56 the following paragraph shall be substituted :—

"(14) Where a person is alleged to be guilty of an offence against these regulations which appears to the Minister of Munitions to be a munitions offence as hereinafter defined, the case, instead of being referred to the competent naval or military authority, shall be referred to the Director of Public Prosecutions, the Lord Advocate, or the Attorney-General for Ireland, as the case may be, who shall investigate the case and determine whether or not the case is to be proceeded with, and if it is to be proceeded with, whether it is to be tried by a court of summary jurisdiction, or by a civil court with a jury, or, subject to the rights of the offender if a British subject under the Defence of the Realm (Amendment) Act, 1915, and to the consent of the Admiralty or Army Council, by court martial.

"For the purposes of this provision 'munitions offence' means an offence in contravention of any order made or any directions, regulations, or restrictions given or issued by the Minister of Munitions under these regulations, or an offence against these regulations in respect of any matter within the scope of the powers and duties for the time being assigned to the Minister of Munitions, and the decision of the Minister of Munitions as to whether an alleged offence is a munitions offence shall be conclusive."

The last paragraph of Regulation 42 commencing with the words "This regulation so far as it relates" is hereby revoked.

Defence of the Realm (Liquor Control) Regulations.

ORDERS IN COUNCIL.

[Recitals.]

It is hereby ordered that the following amendment be made in the said Regulations :—

At the end of Regulation 2 the following paragraph shall be inserted :—

"Where by any Order of the Board the sale of intoxicating liquor in licensed premises in any area is restricted to a total of five-and-a-half hours a day, or less, the weekly half-holiday required to be given to the assistants employed in such premises under section 1 of the Shops Act, 1912, may begin not later than three instead of half past one o'clock in the afternoon, but this provision shall not apply to any licensed premises in which any assistant is employed for more than sixty-five hours in any week exclusive of meal times."

15th February.

Southern Military and Transport Area.

[Recitals.]

It is hereby ordered as follows :—

The Defence of the Realm (Liquor Control) Regulations, 1915, and any Regulations amending the same, shall be, and are, hereby applied to the area defined and specified in the Schedule hereto.

SCHEDULE.

The Southern Military and Transport Area, being the area comprising the Town and County of Poole, and the County of Dorset (excepting the Boroughs of Bridport and Lyme Regis, and the Petty Sessional Division of Bridport); the City of Salisbury, and the County of Wilts; the City of Winchester, the County Boroughs of Bournemouth, Portsmouth and Southampton, and the County of Southampton (including the Isle of Wight); the County Borough of Reading, and the Boroughs of Maidenhead and Windsor, and the Petty Sessional Divisions of Maidenhead, Reading (excepting the Parishes of Aahampstead, Bassildon and Streatley), Windsor, and Wokingham, in the County of Berks; the Parishes of Maple Durham, Kidmore End, Eye and Dunsden, and Shiplake, in the County of Oxford; the Petty Sessional Division of Stoke, and the Parishes of Farnham Royal, Burnham, Taplow, Hitcham, Dorney, and Boveny, in the County of Buckingham; the Boroughs of Guildford and Godalming, and the Petty Sessional Divisions of Chertsey, Farnham, Guildford, and Working, in the County of Surrey; the City of Chichester, and the Petty Sessional Divisions of Chichester, Arundel, Petworth, and Midhurst, in the County of Sussex.

Bristol and Bath Area.

[Recitals.]

It is hereby ordered as follows :—

The Defence of the Realm (Liquor Control) Regulations, 1915, and any regulations amending the same shall be, and are, hereby applied to the area defined and specified in the Schedule hereto.

SCHEDULE.

The Bristol and Bath Area, being the area comprising the Cities of Bristol and Bath, the Petty Sessional Division of Lawford's Gate, in the County of Gloucester; the Petty Sessional Divisions of Long Ashton, Keynsham, Weston, and Frome, and the Parishes of Chew Stoke, Chew Magna, Stowey, Stanton Drew, Chelwood, Publow, and Norton Malreward, in the County of Somerset; and the area within the circumference of a circle having a radius of five miles measured from the Lighthouse known as the "South Pier Lighthouse," Avonmouth, and situate in the Bristol Channel at or near the estuary of the River Avon.

Restrictions on British Merchant Ships.

ORDER IN COUNCIL.

[Recitals.]

It is hereby ordered that, from and after the First day of March, 1916, no British steamship registered in the United Kingdom exceeding 500 tons gross tonnage, except steamships engaged in the coasting trade of the United Kingdom, shall proceed on any voyage, unless a licence to do so has been granted to or in favour of the owner or charterer of such steamship by the Licensing Committee appointed by the President of the Board of Trade under the provisions of the aforesaid Order in Council of November 10th, 1915, which licence may be general in reference to classes of ships or their voyages or special.

And the President of the Board of Trade is to act and give instructions and directions accordingly.

Deceased Seamen's Medals.

ORDER IN COUNCIL.

[Recitals.]

It is hereby ordered that Clause 33 of the Order in Council of the 28th December, 1865, shall be cancelled from the date of this Order, and in lieu thereof shall be substituted the following :—

"33. Any medal to which an Officer, Seaman, or Marine is entitled, but which is not issued at the time of his death, shall be disposed of as follows :—

"(1) When bequeathed by Will, the medal shall be sent to the Legatee.

"(2) When not bequeathed by Will, the medal shall be sent to the person standing nearest in the following order of relationship :—

1. Widow.
2. Eldest surviving son.
3. Eldest surviving daughter.
4. Father.
5. Mother.
6. Eldest surviving brother.
7. Eldest surviving sister.
8. Eldest surviving half-brother.
9. Eldest surviving half-sister.

"(3) When the medal cannot be disposed of as above, it may be sent to some other relative or interested party at the discretion of the Lords Commissioners of the Admiralty.

The same procedure shall be followed in the case of unissued decorations, except where specific direction as to their disposal is contained in the statutes or rules of the various Orders."

15th February.

Paper Commission.

With reference to the Proclamation printed above, prohibiting the importation, amongst other articles, of paper, wood-pulp, and other paper-making materials, it is announced that His Majesty has issued a Commission to grant licences for the importation of such quantity or such proportion of these goods as the Board of Trade may from time to time direct, and to arrange for the importation of this quantity or proportion, and for the distribution of the imports among paper makers and paper users on such terms as may appear to the Commission to be equitable.

The following gentlemen have been appointed to serve upon the Commission :—

The Right Hon. Sir Thomas Whittaker, M.P. (chairman).
Sir Rowland Bailey, C.B., I.S.O., M.V.O.
George Brown, Esq.
W. Howard Hazell, Esq.
James Jeremiah, Esq.
Sir Frederick Macmillan, Kt.
Sir Walter Nugent, Bt., M.P.
Ernest Parke, Esq.
Oswald Partington, Esq., M.P.
Albert Reed, Esq.
The Right Hon. Sir Albert Spicer, Bt., M.P.

The Hon. John Singleton Clemons will act as secretary to the Commission, and all communications should be addressed to him at Central House, Kingsway, W.C.

Sir Thomas Whittaker, says the *Times*, edited newspapers before entering Parliament. Sir Rowland Bailey is a former controller of His Majesty's Stationery Office. Mr. Brown is a member of the publishing firm of T. Nelson & Sons, and Mr. Hazell is another publisher, of Messrs. Hazell, Watson & Viney. Mr. James Jeremiah is a member of the newspaper firm of E. Hulton & Co. (Limited). Sir Frederick Macmillan is chairman of Macmillan & Co. (Limited), publishers. Sir Walter Nugent is chairman of the *Freeman's Journal*, and Mr. Ernest Parke a director of the *Daily News* and the *Star*. Mr. Partington is a director of a paper-pulp company, and Mr. Albert Reed and Sir Albert Spicer are both paper manufacturers.

Increase of Rent and Mortgage Interest (War Restrictions), England.

(*Continued from page* 278.)

We are obliged from pressure of matter to hold over the remainder of the forms scheduled to these rules. They are as follows :—

3. Summons for Apportionment of Rent or Rateable Value of Property.
4. Certificate on Application for Determination of Question as to Increase of Rent.
5. Order on Application for Order authorizing Mortgagee to call in and enforce Mortgage.
6. Certificate on Application for Apportionment of Rent or Rateable Value.
7. Notice of Application for Suspension, Discharge, or Variation of Determination or Order.
8. Order on Application for Suspension, Discharge, or Variation of Determination or Order.

The Imperial General Staff.

ORDER IN COUNCIL (see *ante*, p. 275).

Whereas His Majesty has been pleased to approve a change in the constitution of the Army Council, and to create, by Letters Patent dated the 23rd December, 1915, the Office of Deputy Chief of the Imperial General Staff :

And whereas it is expedient to assign certain specific duties to the Chief of the Imperial General Staff, and to the Deputy Chief of the Imperial General Staff :

And whereas under the powers conferred by the Order in Council dated the 10th August, 1904, the Secretary of State has already allotted to the Chief of the Imperial General Staff the duty of issuing orders in regard to Military Operations :

Now, therefore, His Majesty, by and with the advice of His Privy Council, is pleased to order, and it is hereby ordered, as follows :—

The Chief of the Imperial General Staff shall, in addition to performing such other duties as may from time to time be assigned to him under the Order in Council dated the 10th August, 1904, be responsible for issuing the orders of the Government in regard to Military Operations.

The Deputy Chief of the Imperial General Staff shall be responsible for the performance of such of the duties of the Department as the Chief of the Imperial General Staff may assign to him from time to time.

27th January.

Mr. Herbert Thomas Roberts, for over thirteen years judge's usher in the Bow County Court, has received from his Honour Judge Smyly, K.C., who retired at Christmas, a silver inkstand, inscribed "With grateful thanks for the many years of faithful attendance upon me."

Societies.

The Belgian Lawyers' Relief Fund.

LIST OF FURTHER DONATIONS.

Duncan McNeill, Esq., Crown Advocate, Shanghai	£25	0	0
T. J. C. Tomlin, Esq., K.C.	5	5	0
Messrs. Humphreys, Phillips & Co.	2	2	0
H. B. Curwen, Esq.	1	1	0
Messrs. Guillaume & Sons	1	1	0

Cardiff Law Society.

The annual general meeting of this society was held at the Law Library, Cathays Park, Cardiff, on Friday, 28th January, under the presidency of Colonel J. A. Hughes, D.L. The annual report of the committee was received, from which it appeared that twenty-seven members of the society were now serving with His Majesty's Forces, and, in proposing the adoption of the report, the president referred to the losses sustained by the society during the past year by the deaths of Mr. J. P. Ingledew, Mr. James Morgan, Mr. H. Morgan Rees, and Mr. F. C. Vaughan. The report having been adopted, Mr. William Bradley, J.P., the hon. treasurer, presented his statement of accounts for 1915, which were approved, and on the motion of the president it was resolved that £250 of the society's funds be invested in Exchequer Bonds. Mr. C. St. David Spencer was unanimously elected president, and the Right Hon. Donald Maclean, M.P., vice-president, for the year 1916; and Colonel J. A. Hughes and Messrs. W. H. Pethybridge, C. S. Goodfellow, and W. G. Howell were added to the committee in place of the retiring members, Messrs. Ivor Vachell, Walter Scott, J.P., Sydney Jenkins, and W. A. G. Williams. The meeting concluded with votes of thanks to the retiring president (Colonel Hughes), the hon. treasurer (Mr. William Bradley), and the acting hon. secretary (Mr. Trevor J. Shackell).

The Union Society of London.

The tenth meeting of the 1915-1916 session of the above society was held at the chambers of Mr. W. R. Willson, 3, Plowden-buildings, Temple, on Wednesday, 16th February, 1916, at 8 p.m. Mr. Coram was in the chair. Mr. Willson moved: "That this House is of opinion that the decision in the Continental Tyre and Rubber Co. (Limited) *v.* Daimler Co. (Limited) was wrongly decided." Mr. Quass opposed the motion. There also spoke: Mr. Engineer, Mr. Eustace, Mr. Stranger, Mr. Geen, Mr. Kingham and Mr. Thomas. The motion was carried.

The Lord Chancellor on Reprisals.

Lord Buckmaster last Saturday, says the *Daily News*, met about 2,000 of his former constituents in the Municipal Buildings, Keighley.

At a reception given by Sir John Clough, Lord Buckmaster, whose reception was very cordial, said that the old political barriers and divisions had been effaced, and we stood no longer as two parties, but as one welded and united nation in the face of the common foe.

"I sometimes wonder," the Lord Chancellor went on, "when I read letters written to London newspapers by people who seem strangely unemployed why it is they cannot do something better than attempt to represent to the world a false impression of the English people. What calls this to my mind are the letters I have recently seen with regard to air raids over this country. Some of the writers demand perfect protection against a force that you can never perfectly protect yourself against. No man can go about secure from the dagger of the assassin that will strike him in the back.

"Then they demand that we shall meet these attacks by what they call reprisals upon the German people. I am not sure that I know quite well what they mean, but if they mean by that that because the Germans have wantonly and in cold blood murdered women and children in this war we should murder German women and children in return, I can only say that I protest from the bottom of my heart against any such thing. To do that is to give to the Germans the very victory that we mean to win. There could be no greater tragedy in the black tragedy of this time than that, when we have conquered the German people, we should be found to have moulded ourselves and our behaviour upon the very model that we set out to break.

"This is not merely a war of armies, it is a war of great ideals; it is a war in which upon one side there is the elevation of the right of law and the obligation of plighted faith. On the other side there is the ideal that says no covenant, no humanity, no law, no morality, shall stand against the development of a people by brutal and iron power. We will avenge ourselves for these air raids, but we will avenge ourselves upon their armed men in the field of battle, aye, and upon their strong places in the earth; but we will not deliberately imbrue our hands in the blood of the innocent, the defenceless, and the weak."

Lord Sumner on the Need for Self-Sacrifice.

Lord Sumner, on the 11th inst., says the *Times*, delivered an address on "How Non-Combatants Can Help to Win the War" at a meeting held by the United Workers at the residence of Lady St. Cyres, 84, Eaton-square, S.W., on Saturday.

Lord Sumner, in the course of his address, said he would rather face an indefinitely prolonged campaign than contemplate any other termination than absolute victory. The Prime Minister had said that the war was costing four and a half millions to five millions per day, and that the rate of expenditure was likely to increase. Some idea of such an expenditure might be gained from the statement that if the House of Lords and the House of Commons could be taken and thrown into a volcano every day the loss represented would be less than the daily cost of the campaign. If we won in this campaign it would not matter if we were bankrupt at the end, but if we lost we should be bankrupt in any case. We must remember that we were fighting an intense, obstinate, dour, and tenacious enemy, whom he could only liken to a stoat for dogged, ferocious courage, and if we were to overcome a foe of this kind the utmost effort and self-sacrifice all round were imperative.

Mr. C. J. Stewart, the Public Trustee, said that the United Workers was an organization which desired to help in the direction of preaching and practising economy, and they felt that rigid economy would be absolutely essential.

A Capital Scheme.

A correspondent has called our attention to the following *jeu d'esprit* by Wm. H. Woodwell, jun., in *Case and Comment* for last December. We may explain that "L. R. A." stands for "Lawyers' Reports Annotated"—a series which for twenty-seven years (we quote from an advertisement in *Case and Comment*) has been reporting and annotating those cases which bring out forcibly 'the solid principles of the law'"; the object being to reduce the number of volumes of decisions, a matter more important in the United States even than here:—

The lawyer has no E Z life,
And if he would X L,
He must have every A D can
R E cannot do well.

Every D D does is watched,
And every K C tries;
He can't succeed with M T shelves
B E so very wise.

He will become a C D man,
And oft be called A J,
Unless he gets what L P can
Obtain in N E way.

U C must be up to date,
Or L C cannot try
To C K place among the few
Who R A counted high.

Now if this N D has in view,
And such he would S A,
Rather than buy X S of books,
Let him have L. R. A.

The Right of Free Speech.

The following letter appeared in the *Times* of the 15th inst.:—

SIR,—The *Times* remains the forum of the British nation, and I would therefore appeal to it to consider the grave question of the organized interruption of the meetings of the Society of Friends in the City. It is useless to expect an act of courage from this Government; otherwise this suppression of the constitutional right of free discussion would long ago have been itself suppressed. But the public ought by this time to know that no body of citizens exercises rights, in ordinary or in extraordinary times, with a greater sense of responsibility than the Quakers, and that therefore they may be trusted to speak in public, as in private, with measure and restraint. They do not indeed raise an immediate issue, such as the stopping of the war, or the conclusion of a "premature" peace. They may discuss possible terms of ultimate settlement, a matter on which we must all form an opinion, sooner or later. They do, I imagine, raise such grave questions as the incompatibility of a state of war such as Europe is now waging with the existence of Christian civilization, a matter on which they and the Editor of the *Times* might from a rather different point of view, be in agreement. Is such debate, conducted on the plane on which the Society of Friends conduct it, to be forbidden by mob violence?

If it is, I can only suggest that the character of the country is not thereby raised in the eyes of neutrals, and that it lies with the leaders of opinion to say that it is proper to hold, and to state in public, the view that Christian ethics have something to say as to the future of the world.

Yours faithfully,

H. W. MASSINGHAM.

London, 11th February.

Obituary.

Mr. Donald F. Wilbraham.

The death is announced from Dominica, West Indies, of Mr. DONALD FORTESCUE WILBRAHAM, who had recently been appointed a puisne judge of the Leeward Islands.

Mr. Wilbraham, who was fifty years old, was the eldest son of the late Mr. Henry Wilbraham, of Overdale, Sandiway, Cheshire. Educated at Trinity College, Oxford, where he graduated, he was called to the Bar by Lincoln's Inn in 1891, and five years later he went to Sierra Leone as Master of the Supreme Court and Registrar-General. He was appointed Attorney-General of that colony in 1908, and while he held that position he edited a revised edition of its laws.

Legal News.

Appointments.

Mr. FRANK NEWBOLT, K.C., has been appointed to be Recorder of Doncaster, in the place of the late Mr. S. H. F. Lofthouse, K.C.

Mr. EDWARD MARSHALL-HALL, K.C., has been appointed to be Recorder of Guildford, in the place of Sir George Cave, K.C., now Solicitor-General.

Changes in Partnerships.

Dissolution.

ARTHUR BIRKIN LITTLEWOOD and HERBERT FREEMAN CHATWIN, Solicitors (Littlewood & Chatwin) 23, King-street, Nottingham, and at 2, Bramcote-road, Beeston, Notts. Feb. 10th. [*Gazette*, Feb. 15th.

General.

In dealing with a case of Army desertion at Marlborough-street Police-court last week, Mr. Mead said that valuable time and money were wasted by having to send for escorts to convey deserters back to their regiments. In the case of deserters from the Navy they were always taken back to their ships by the police, and the arrangement had worked satisfactorily.

At Bow-street Police Court, on the 11th inst., before Mr. Graham Campbell, Mr. William Lewis, for the Director of Public Prosecutions, asked for the committal of Peter McCallum, a solicitor's clerk, and Harry Lessner, a secretary, on charges of conspiracy to defraud in connection with the Provident Legal Accident Society (Limited), "The Poor Man's Lawyer," of Euston-road; of fraudulent conversion, and of forging a receipt. He also asked for the committal of McCallum under the Prevention of Corruption Act. Mr. E. E. Wild, K.C., for the defence, pointed out that it had not been possible to devote more than one hour, or perhaps two, to the case each week, which was the result of Parliament not appointing an adequate number of magistrates. If the defence had been put forward at that court the case would not have been over much before Easter, but he was instructed that upon all the charges the defendants had a satisfactory answer. The defendants, who both pleaded "Not Guilty" and reserved their defence, were committed for trial.

William Beavan, a soldier, who was convicted at the London Sessions of larceny, and was sentenced by the Deputy Chairman to three years' penal servitude and ten years' preventive detention, appealed, says the *Times*, against the latter part of this sentence in the Court of Criminal Appeal on Monday. The appellant appeared in person. Mr. P. T. Blackwell appeared for the Crown. Mr. Blackwell pointed out that the appellant had been convicted many times, and had served two terms of five years' penal servitude. He said that the appellant's present offence was a mean one—the stealing of £9 from a poor lodging-house keeper. The Lord Chief Justice said that no doubt the length of the term of preventive detention which the appellant might actually serve depended on how he behaved, and many who had reformed had been released after serving a comparatively short term. But they must also consider the case from the point of view of the man who did not reform. The minimum sentence of preventive detention was five years and the maximum ten; within those limits it was for the Court to exercise its discretion. The Deputy Chairman said, in passing sentence, "I see no reason to reduce the sentence which I must impose below the maximum." That looked as if he had thought that he ought to impose the maximum sentence unless there were special circumstances to induce him to reduce it. That was wrong. (See *Rex* v. *Sullivan*, 30 T. L. R., at p. 94). As the Deputy Chairman seemed to have acted on a wrong rule, that Court could interfere with the sentence, and would reduce it to one of three years' penal servitude and five years' preventive detention.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Neville.	Mr. Justice Eve.
Monday ..Feb. 21	Mr. Borrer	Mr. Bloxam	Mr. Greswell	Mr. Goldschmidt
Tuesday 22	Leach	Jolly	Church	Bloxam
Wednesday .. 23	Goldschmidt	Greswell	Leach	Farmer
Thursday 24	Farmer	Leach	Borrer	Church
Friday..... 25	Church	Borrer	Synge	Greswell
Saturday 26	Synge	Goldschmidt	Jolly	Leach

Date.	Mr. Justice Sargant.	Mr. Justice Astbury.	Mr. Justice Younger.	Mr. Justice Peterson.
Monday ..Feb. 21	Mr. Leach	Mr. Jolly	Mr. Synge	Mr. Farmer
Tuesday 22	Goldschmidt	Greswell	Borrer	Synge
Wednesday .. 23	Church	Borrer	Jolly	Bloxam
Thursday 24	Greswell	Synge	Bloxam	Goldschmidt
Friday..... 25	Jolly	Farmer	Goldschmidt	Leach
Saturday 26	Borrer	Bloxam	Farmer	Church

The Property Mart.

Forthcoming Auction Sale.

March 15.—Messrs. DUNCAN, KIMPTON & SONS, at the Mart, at 2: Leasehold Houses (see advertisement, back page, this week).

Winding-up Notices.

JOINT STOCK COMPANIES.

LIMITED IN CHANCERY.

London Gazette—FRIDAY, Feb. 4.

ACCUMULATOR INDUSTRIES, LTD.—Creditors are required, on or before Mar 8, to send their names and addresses, and the particulars of their debts or claims, to George Edgar Corfield, Balfour House, Finsbury pvmt, E.C., or Alfred W. Sully, 19-21, Queen Victoria st, E.C., liquidators.

JOHN RUSSELL AND CO, LTD.—Creditors are required, on or before Mar 4, to send their names and addresses, and the particulars of their debts or claims, to Theodore David Neal, 110, Edmund st, Birmingham, liquidator.

LAING AND WOOD, LTD.—Creditors are required, on or before Feb 18, to send their names and addresses, and the particulars of their debts or claims, to W. A. Henderson, 3, Fenchurch st, E.C., liquidator.

JOINT STOCK COMPANIES.

LIMITED IN CHANCERY

London Gazette.—TUESDAY, Feb. 8.

MILLS & SMITH, LTD.—Creditors are required, on or before Feb 21, to send their names and addresses, with particulars of their debts or claims, to Tom Williamson Mors, 19, John Dalton st, Manchester, liquidator.

Resolutions for Winding-up Voluntarily.

London Gazette—FRIDAY, Feb. 4.

Recreations (Hayle), Ltd.
W. Cockerton, Ltd.,
Shoreham Camps, Ltd.
Sekondi & Tarkwa Co, Ltd.
G. W. L. Cinematograph Co, Ltd.
Meadows, Ltd.
C. J. W. Prospecting Syndicate, Ltd.
Lonsdale & Thompson, Ltd.
Frank Howard, Ltd.
Cash Registers Exchange Co Ltd.
St. Andrew's Investment Co, Ltd.
Pectan Steamship Co, Ltd.
Hampton Uruguay, Ltd.
George Smythe & Son, Ltd.
Aspatria Reading and Recreation Co, Ltd.
Laing & Wood, Ltd.
Kent Hotels, Ltd.
H. White & Sons, Ltd.
Ariel Motors, Ltd.
Johnston Steamship Co, Ltd.
Wm. Johnston & Co, Ltd.
W. J. Reeves & Co, Ltd.
United Service Club (Newcastle-upon-Tyne and District), Ltd.

London Gazette.—TUESDAY, Feb 8.

Peters & Sons, Ltd.
E. T. Newton & Son Ltd.
West Coast Oil Fuel Co, Ltd.
Bank of Whitehaven, Ltd.

Creditors' Notices.

Under Estates in Chancery.

LAST DAY OF CLAIM.

London Gazette.—FRIDAY, Jan. 21.

KERR, WILLIAM, Ramsden rd, Balham, Builder Feb 28 Berry v. Acres, Younger, J. Vinall, Higher st, Lewes

Under 22 & 23 Vict. cap. 35.

LAST DAY OF CLAIM.

London Gazette.—FRIDAY, Feb. 4.

ALLPORT, THOMAS COOTE, Barnsley Mar 10 Johnston & Co, King's Bench walk
AMER, GEORGE WILLIAM, Croydon Mar 31 Upperton & Bacon, Brighton
ANDREWS, MINNIE, Pakington st, Islington Mar 1 Jennens & Jennens, Kentish Town rd
ASHDOWN, CHARLES JOHN, Catford Mar 3 Sydney & Son, Aldersgate st
BEDFORD, JOHN GEORGE HAWKSLEY, Kilchrenan, Argyll Mar 10 Bedwell, Scarborough
BOCOCK, GEORGE, Ashley, Cambridge, Farmer Mar 1 Button & Aylmer, Newmarket
BOULTBE, HAROLD BAXTER, Richmond, Surrey Mar 1 Fowell & Co, Essex st, Strand
CAMPION, WILLIAM DAVID, Edward sq, Caledonian rd Mar 15 Boulton & Co, Northampton sq
CROSSLEY THEODOSIA, Cross in Hand, Sussex Mar 10 Bridgman & Co, College hill
CLEOBURY, MARGARETTA CATHERINE, Northampton Mar 6 Harrison, Bush ln, Cannon st
CLEIFE, HENRY HOLDITCH THOMAS, Mandeville, Somerset Mar 1 Bond & Pearce, Plymouth
COOKSON, WILLIAM, and ELLEN COOKSON, St Annes on the Sea, Lancs, Builder Mar 7 Banks & Co, Blackpool
CORTES, ENRIQUE, Bogota, Colombia, South America, Banker Mar 17 Maxwell & Dampney, Bishopsgate
CROWTHER, CHARLES LILBOURN, Deal, Kent Mar 1 Wilks, Deal
DAVEY, ALICE MARY, Long Ashton, Somerset Mar 20 Abbot & Co, Bristol
DAWE, CATHARINE MARY, Mumbles, nr Swansea Mar 7 Strick & Bellingham, Swansea
DE MORBL, MATILDA SARAH, Countess, Belgrave mans, Grosvenor gdns Mar 20 Lawrence & Co, New sq, Lincoln's inn
DIXON, CHARLES SEBASTIAN, Salisbury Mar 1 Dixon & Mason, Pewsey, Wilts
DONOVAN, HENRY CORNELIUS, Westcombe pk, Greenwich Mar 9 May, Essex st, Strand
DYER, ELIZABETH, Southampton Mar 4 Green & Co, Southampton
EAVIS, EDWARD, Henstridge, Somerset, Innkeeper Mar 9 Freame & Co, Gillingham, Dorset
EDSELL, GEORGE ALFRED, Surbiton, Surrey, MD Mar 1 Rye & Eyre, Golden sq
GARRATT, SARAH, Warrington Mar 2 Knowles, Warrington
GORE, HENRY, Sutherland pl, Bayswater Mar 6 Davies, Queen's rd, Bayswater
GOTTS, ELIZABETH, East Sheen, Surrey Mar 10 Trevanion & Co, Bournemouth
GREEN-WILKINSON, HILARE, Chester ter, Chester sq Mar 11 Fladgate & Co, Pall Mall
HARPER, RICHARD ANDREW, Bilston, Staffs, Brewer Mar 25 Stratton & Son, Wolverhampton
HART, CHARLES FAULKNER, Nunhead ln, Peckham Mar 11 Philcox, Trinity st, Southwark
HIDES, REBECCA, Stanwix, Carlisle Mar 1 Mawson & Glenny, Carlisle
HILL, JOSEPH, Totland Bay, Isle of Wight Mar 12 Rivers & Milne, Gracechurch st
HUDSON, ARTHUR BYRNE, Chelsham rd, Clapham Mar 6 Harrison, Bush ln, Cannon st
JOHNSON, SIDNEY POPHAM, Highclere, Hants Mar 10 Valpy & Co, Lincoln's inn fields
JONES, FANNY Feb 18 Pinniger & Co, Westbury, Wilts
MARSHALL, KATE, Birkenhead, Chester Feb 19 Bremner & Co, Liverpool
MARSHALL, SUSANNA EMMA, Palliser rd, Kensington Mar 31 Pilley & Mitchell, Bedford row
MOFFAT, HENRY YOUNG, Cloudesdale rd, Balham Mar 8 Carr & Co, Rood ln
MORRIS, EVA ANNIE, Lee, Kent Mar 25 Marsden & Co, Henrietta st, Cavendish sq
NOTT, JEMIMA EMMA, Hove, Sussex Mar 2 Barrett & Co, Slough, Bucks
PEARSON, CHARLES HUGH, Clifton, Bristol Mar 5 Ford & Co, South sq, Gray's inn
POOLE, LOUISA, Windsor Mar 6 Russell, Broadway, Bexley Heath
PULLIN, EDWIN, Olveston, Glos Feb 16 Crossman & Co, Thornbury, Glos
ROADS, FRANCIS, Dinton, Bucks, Farmer Mar 1 J & T Parrott, Aylesbury
ROCHFORD, JAMES FAGAN, Cornwall mans, Regent's pk Mar 4 Fowler & Co, Bedford row
ROTH, CARL CHRISTIAN EMIL, Sanderstead, Surrey Mar 17 Lewis & Ylesilis, Oil Jewry
RUSSELL, JOHN LEMMON Blenheim gdns, Cricklewood, Photographer Mar 6 Doman Twyford av, West Acton
SAVORY, THOMAS JAMES, Colchester av, Manor Park April 1 Bodman, Strand
SEANOR, JOSEPH, Harrogate, Postman Mar 1 Topham, Harrogate
SHELFORD, ETHEL JUSTINA, Hockley Heath, Warwick Mar 4 Wade & Jackson, Hitchin, Herts
STANDRING, ELEANORA, Bowdon, Chester Mar 30 Lee, Manchester
STOCKS, EMMA, Queensbury, Yorks Mar 2 Elliott, Queensbury
STOKES, ELIZABETH ANN, Worfield, Salop Mar 14 Wansbroughs & Co, Bristol
STOKES, MARTHA CORSER, Bridgnorth, Salop Mar 14 Wansbroughs & Co, Bristol
STOKES, MARY SMITH, Bridgnorth, Salop Mar 14 Wansbroughs & Co, Bristol
STREETS, WALTER HENRY, Blackpool, Wholesale Confectioner Feb 18 Butcher, Blackpool
TATUM, HAROLD, Major, 101st Grenadiers, HM Indian Army Feb 29 Jackson & Co, Coleman st
TAYLOR, FRANCIS, Diss, Norfolk Mar 25 Davenport & Co, Chancery ln
THOMPSON, MARY JANE, Aberystwyth Mar 15 Davies & Son, Aberystwyth
TOD, JAMES, Boston, USA Mar 15 Masters & Venables, Liverpool
UNWIN, ARTHUR, Loudoun rd, Saint Marylebone Feb 21 Ashington & Denton, Sheffield
VAVASOUR, Sir WILLIAM EDWARD JOSEPH, Goldhawk rd, Shepherd's Bush Mar 8 Bland & Co, Trafalgar sq, Charing Cross
VOSS, ELISA, New Barnet, Herts Mar 1 A F & R W Tweedie, Lincoln's inn fields
WALL, LIZZIE, Aberystwyth Mar 15 Davies & Son, Aberystwyth
WATHEN, SAMUEL, Brownshill, nr Stroud, Glos, Farmer Mar 1 Winterbotham & Sons, Stroud
WATSON, ARABELLA VICTORIA, Kew Gardens, Surrey Mar 6 Harrison, Bush ln, Cannon st
WEBSTER, HARRIET, Leyton, Essex Feb 29 White, High rd, Ilford
WHEELER, GEORGE, Canonbury pk South Mar 4 Daphne, Lincoln's inn fields
WORTH, CATHERINE, Harrogate Mar 4 South & Co, Southampton st, Bloomsbury

London Gazette.—TUESDAY, Feb. 8.

ADIE, JOSEPH ROSAMOND, Ambala, Punjaub, India Mar 11 Pearce & Nicholls, Clements inn, Strand
BENFIELD, THOMAS WARBURTON, Leicester Mar 10 Salusbury & Woodhouse, Leicester
BLUNT, ROBERT JOSEPH, Edgbaston, Birmingham, Commercial Traveller Mar 18 Coates, Birmingham
BREDDY, CHARLES, Winterbourne, Glos, Market Gardener Mar 10 Jones, Bristol
BROOKS, CHARLES, Hove, Sussex, General Shop Keeper Mar 22 Bunker, Hove
BURROW, ANNE, Priest Hutton, Lancs Mar 18 Hall & Co, Lancaster
CLARK, EDWARD JOSEPH, Gresham st, Brixton, Civil Servant Mar 8 Pritchard, King st
DAWKINS, PERCY HENRY, Witney, Oxford Mar 11 Dowson & Co, Surrey st
DE FRY, JOHN JAMES, Colombo, Ceylon Mar 14 Hubbard, Bloomsbury sq
DIXON, MARY ANN, Lower Broughton, Salford Mar 18 Littler, Manchester
DOUTHWAITE, ISABELLA, York Mar 4 Kay, York
EVANS, FREDERICK, Seaford, Sussex Mar 25 Stanton & Hudson, Cannon st
EXELL, NOEL JARDINE, Temporary Captain, 9th (Service) Battalion, King's Royal Rifle Corps Mar 10 Bundell & Co, Serjeant's inn
FLANAGAN, JOHN PATRICK, Unsworth, nr Bury, Lancs, Hay and Straw Dealer Mar 10 Butcher & Barlow, Bury
GLEDHILL, EMILY, Stainland, nr Halifax Mar 11 Boocock & Son, Halifax
HALL, MERCY MARY, and PRIEST, EMILY ELIZABETH, Amersham, Bucks Mar 13 Winterbotham, Frederick's pl, Old Jewry
HARRIS, HARRIET, Graham rd, Hackney Mar 13 Freeman, Eldon st
HEATON, LLEWELYN FRANCIS, Rhyl, Flint Mar 11 Jones & Co, Denbigh
HISTED, JOHN RICHARD, Brighton Mar 9 Crump & Son, Leadenhall st
HUBBARD, HAGAR SUSAN, Stourport, Worcester Mar 1 Capel Loft, Stourport
JONAS, COLEMAN, Springdale rd, Green ln, Government Contractor Mar 8 Aird & Co, Brabant ct
KERSHAW, JOHN STEVENSON, Littleborough, Lancs, Flannel Manufacturer Mar 22 Jackson & Co, Rochdale
LAY, SARAH, Pewsey, Wilts Mar 3 Dixon & Mason, Pewsey
LLOYD-TAMBERLAIN, MARIANNE, Knaresborough pl, Earl's Court Mar 13 Clarke & Co, John st, Bedford row
LOCKLEY, RUPERT EDWARD HOLDEN, late a Major in HM Gordon Highlanders Mar 8 Hills & Co, Queen Anne's gt, Westminster
LONG, LOFTUS SIDNEY, Porchester sq, Hyde Park April 3 Johnson & Co, New sq
LYONS ELIZA, Broadhurst gdns, Hampstead Mar 8 J & M Solomon, Finsbury pvmt
MADDOCK, FREDERICK ARTHUR, Oakengates, Salop, Ironfounder Mar 1 Holmes, Oakengates
MARSHALL, EDEN, Sunderland Feb 15 Niel & Crute, Sunderland
MELDOLA, RAPHAEL, FRS, DSc, LLD, Brunswick sq Mar 10 Coburn & Co, St Helen's pl
MOLYNEUX, ELLEN MARY, Prince of Wales ter, Kensington Mar 8 Mason & Co, High Holborn
MUDIE, AGNES SOPHIA, Sutton Coldfield Mar 4 Taylor, Burton on Trent
NUNNS, REUBEN, Hanslet, Leeds May 15 Brooke & Dyer, Leeds
OVINGTON, ISAAC SCARTH, Guisborough Mar 1 Buchannan & Richardson, Guisborough
PEARSON, FRED STARK, Great Barrington, Massachusetts, USA Mar 21 Hubbard, Bishopsgate
PERRY-HERRICK, SOPHIA, Leicester Mar 3 Peake & Co, Bedford row
READ, Captain ANKETELL MOUTRAY, Bampton, Devon Mar 4 Fisher, Tiverton
ROBSON, EMMA, Newcastle upon Tyne Mar 9 Richardson & Elder, Newcastle upon Tyne
SALTER, ORLANDO PURDY, Bristol Mar 31 Broad & Lewis, Bristol
SCHOLFIELD, ROBERT, Nelson, Lancs, Cotton Manufacturer Mar 13 Chapman & Co, Manchester
STANTON, EMILY ROSE, Stroud, Glos Mar 25 Stanton & Hudson, Cannon st
STEVENS, JOHN, Worth Matravers, Dorset, Farmer Mar 29 Slade & Son, Swanage
SMITH, SARAH ELIZABETH, Scarborough Mar 3 Ryan & Armstrong, Mansfield, Notts
WARNER, CORNWALLIS JOHN, Cork st Mar 25 Stanton & Hudson, Cannon st
WESSBERGE, EMILY BEATRICE, Saint Evroult, Notre Dame du Bois, France Mar 4 Boyce & Evans, Stratford pl
WETHERED, WALTER, Hampton Court, Middlx, Mining Engineer Mar 4 Hays & Co, Clement's ln
TANNER, JOHN ALFRED, Rectory rd, Stoke Newington, Cabinet Manufacturer Mar 1 Wilkinson & Casley, Queen's rd, Dalston
TREMAYNE, HENRY, Budock, Cornwall Mar 25 Watson, Penryn, Cornwall
WOOD, ERNEST, Woking, Surrey Mar 8 Goodman, East Molesey, Surrey